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THE

PUBLICATIONS

OF THE

Selden Society

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VOLUME XIX

FOR THE YEAR 1904

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The Year Books Series

VOL. II.

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Selden Society

YEAR BOOKS OF EDWARD II.

VOL. II.

2 & 3 EDWARD II.

A.D. 1308–9 AND 1309–10

EDITED

FOR THE SELDEN SOCIETY

BY

F. W. MAITLAND

He [Serjeant Maynard] had such a relish of the old year-books that he carried one in his coach to divert him in travel, and said he chose it before any comedy.

ROGER NORTH

C'est toute la tragédie, toute la comédie humaine que met en scène sous nos yeux l'histoire de nos lois. Ne craignons point de le dire et de le montrer.

ALBERT SOREL

LONDON

BERNARD QUARITCH, 15 PICCADILLY

1904

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PREFATORY NOTE BY THE HON. SECRETARY.

This volume is issued as an extra volume for 1904 in addition to the 'Borough Customs,' Vol. I., already distributed. The industry of the editor has enabled the Council so far to respond to the desire of many members for a more rapid publication of these Year Books of Edward II. If the editorial and financial conditions permit, it is hoped that the production of an additional volume may from time to time be repeated. Nevertheless, it must be taken rather as an occasional bonus than as part of a normal dividend.

B. F. L.

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INTRODUCTION

The present volume being issued under the conditions stated in the Prefatory Note, want of time and want of space forbid me from entering on that account of the numerous manuscripts which I had hoped to prefix to the second instalment of the Year Books of Edward II. The delay is not altogether to be regretted, for what has to be said about this matter, and especially about duplicate and triplicate reports, will be the more intelligible if reference can already be made to three volumes of examples which will be in the hands of members of the Society. To this may be added that every year's work upon the manuscripts may bring us a little nearer towards the solution of some intricate problems.

This having been premised, advantage will be taken of the present opportunity for the making of a few miscellaneous remarks which should be made sooner or later.

As regards the beginnings of law reporting, we can now add a little to what was said last year. It will be remembered that those reports of Edward I.'s day which Mr. Horwood edited in the Rolls Series take us back to the twentieth year of the reign (1292). It will be remembered, also, that he told[1] of the existence of apparently older, but not expressly dated, reports which he did not edit. Last year we observed[2] that Fitzherbert in his Abridgement refers to a good many cases of the thirteenth year (1284–5). A closer examination of his work enables us to speak more positively about the materials that were in his hands. He had reports of a Cornish eyre of A.R. 30, and a series of expressly dated reports beginning with the Easter Term of A.R. 31 and extending, though perhaps with some gaps, from that point until the end of the reign, which occurred in A. R. 35.

[1] Year Books 20-21 Edw. I. (Rolls Ser.) p. xv.
[2] See our vol. i. p. xiv.

He may have had some expressly dated reports lying between A.R. 20 and A.R. 30; but, if so, he used them sparingly, and even in his very careful work allowance must be made for a few mistakes.[1] He had a large mass of undated cases, which he cites as 'En temps E. I.;' so vague a voucher, frequently repeated, tells us that greater precision was impossible. But lastly, he had three sets of cases which he knew respectively as 'Iter Wilts. 12 E. I.,' 'Iter North. 13 E. I.' and '13 E. I. apud Westm.' He takes, if we have counted rightly, nine cases from the first of these batches, twenty from the second, and thirteen from the third; and what he gives with these rubrics are evidently notes made from true 'reports,' and not notes made from 'records.'[2] To mention this distinction seems advisable, for when he goes behind Edward I.'s day, then what he gives us are no longer notes from reports, but are notes from records, or rather, as was shown some years ago, they are notes taken from those copies of records that are collected in Bracton's Note Book.[3] Our great abridgment-maker, therefore, had reports which on their face professed to come from the year 1284.

Upon these we have not yet lighted; but, on the other hand, we can say with some certainty that in the large mass of undated, and therefore as yet unprinted, reports which is still to be found in our libraries there are numerous cases which are older than the great scandal of 1289. The wholesale dismissal of judges in that year affords an easily applicable test. A case, for example, in which Weyland is laying down the law can come from no later date. But further, without prematurely announcing the result of unfinished searches, we may add that one of our manuscripts contains a few cases which, unless we are much mistaken, belong rather to the seventies than to the eighties of the thirteenth century: cases decided by men who were on the bench in Henry III.'s day and who must have known Bracton.[4]

The existence of these masses of undated cases seems to illustrate the evolution of the law reporter. The first man who from time to time makes notes of the discussions that he hears in court is not

[1] We find one case attributed to Mich. A.R. 20; one to Mich. A.R. 26; two to Mich. A.R. 28; and one to A.R. 29.

[2] The reference under 'Quare eiecit 4' to H. 3 E. I. should probably be to M. 3 E. II. See the case printed on p. 84 of this present volume.

[3] Note Book, i. 117.

[4] The manuscript here referred to is Camb. Univ. Libr. Dd. 7, 14. The undated cases I have transcribed, and their date is now being carefully considered by Mr. W. Mitchell, of St. Catherine's College; but the names of Seyton and Littlebury and Preston appear, and seem to point to the very earliest years of Edward I., if not to an older time.

thinking of posterity. He is thinking of himself and perhaps of a few friends to whom he will communicate his lore. He and they know well enough the names of the contemporary justices, and it does not strike him that what he writes may hereafter come to the hands of men who will take some interest in these notes, but who will never have seen the great Littlebury or the great Seyton, and may even have forgotten how the career of Thomas Weyland was brought to an abrupt conclusion. And so he gives no dates. Moreover, there are not wanting signs that in the first days of law-reporting or of note-taking a chronological arrangement did not appear to be obviously the right arrangement of the accumulated matter. On the contrary, it might more conveniently be distributed in a logical or legal order under such titles as 'Right,' 'Entry,' 'Dower,' 'Debt,' and 'Quare impedit.' One of the most interesting of the manuscripts that we are now using is, unfortunately for us, constructed upon this plan. A great body of cases belonging to late years of Edward I. and early years of Edward II. is distributed under titles such as those that have just been mentioned, and, though a date is sometimes set at the side of the page, this is by no means always done. We are therefore prevented from using this handsome book, which has many virtues, as the primary basis of our text; but we take this opportunity of mentioning it prominently in order that it may not escape the notice of our successors.[1]

We might say, then, that it is only by degrees that the oldest law reports become 'Year Books,' and even when the purely chronological scheme has obtained the mastery, we may see that for a while the men who write the manuscripts or have the manuscripts written for them are by no means very careful about assigning the cases to the proper years and terms. We pointed out in our last volume that some of the books which professedly are giving reports of the second year of Edward II. include a small group of cases which to all appearance belong to an earlier date.[2] We must now mention another example. Before turning to the third year, our endeavour was to exhaust all cases which any of our manuscripts attributed to the second. In this way we have obtained not a few cases that do not appear in the old printed edition or in the manuscript—the Maynard manuscript—upon which that edition is based, and in some, though

[1] This is MS. Brit. Mus. Add. 35116, which we mentioned on p. 193 of our first volume. We then proposed to call it Δ, but for greater convenience are now calling it *Y*. A full and good account of it is given in the printed catalogue.

[2] See our vol. i. p. xci. In the note on that page 'Case 75' should be 'Case 57.'

not all, of these instances we can add that the attribution to the second year is warranted by the record. But there is one manuscript which offers no less than twenty-two cases which we have not been able to find elsewhere.[1] After giving them our best attention, we have felt bound to relegate them to an appendix.[2] To judge by the names of the justices and counsel who are concerned in them, some of them belong to Edward I.'s time, while one of them, since it supposes that the dissolution of the Order of the Temple is an accomplished fact, cannot well be as ancient as the second year of Edward II. These twenty-two cases are to be found not in one batch, but in several batches, mixed up with reports which unquestionably belong to the second year. Their occurrence forcibly suggests that the lawyer who made this manuscript for his own use, and who perhaps had borrowed an exemplar from one of his friends, set no great store by exact chronological sequence, and, if while at his work he obtained a note of a case that was especially interesting to him, he would transcribe it at once in order that it might not be forgotten. It is to be feared that in this manner a good many pitfalls for editors may have been dug by those who were consulting their own convenience, and that we shall not always avoid the many dangers that beset our path. At the same time we are happy to say that as yet the work of identifying with recorded cases the cases that our reports attribute to the third year has been fairly successful. We have found almost everything that we could hope to find.

A very considerable amount of the matter that we are printing has never been printed before. Of the fifty cases from the second year that are included in the present volume five-and-thirty are new, and in seven of the fifteen remaining instances we give two reports of the same case. Sir John Maynard's manuscript,[3] which was that employed by the editor of 1678, is proving itself to be a most inadequate source of information. It omits many cases that are to be found in other books, and, when alternative reports are extant, those which it gives are by no means always the fullest or the most intelligible. The fact that it is the manuscript whence in Charles II.'s day the printed book was made does not seem to confer upon it any authority beyond what is due to its intrinsic merits. It is quite clear that Fitzherbert used a manuscript of a different class, and he took from it numerous cases which are not to be seen in the edition of 1678, but which we are gradually discovering in other manuscripts. Nor was

[1] Harl. 835, our *P*. [2] See below, App. I., p. 193.
[3] This is Add. 35094, our *B*.

it Maynard's manuscript that Hale pronounced the best of those with which he was acquainted.[1]

It will not, we hope, be said that our new cases are of less interest than the old. At any rate, before such a condemnation is passed, we would ask attention for one which seems to deserve the notice of every future historian of English equity.[2] A man has bound himself to pay a certain sum if he does not hand over a certain document on a certain day. Being sued upon his bond, he is unable to deny that he did not tender the document on the day fixed for the transfer; but he tenders it now, excuses himself by saying that he was beyond the sea, having left the document with his wife for delivery, and urges that the plaintiff has suffered no damage. The plaintiff relies upon the words of the bond, and we must confess to having thought that in and about the year 1309 judgment for the plaintiff would have followed as a matter of course. But to our surprise Bereford C.J., after remarking that what is sought to be recovered is not properly speaking a debt (*purement dette*) but a penalty (*une peine*), exclaims 'What equity would it be to award you the debt when the document is tendered and you cannot show that you have been damaged by the detention?' In the end the plaintiff is told that he will have to wait seven years for his judgment. Here certainly we seem to see 'relief against penalties' and relief that is granted in the name of 'equity,' though it takes the clumsy form of an indefinite postponement of that judgment which is dictated by the rigour of the law. In this context also we may draw notice to a remarkable judgment that was recorded in an action in which the Prior of Coventry complained of certain of the men of that town for buying and selling outside his market upon market days. The defendants contested the Prior's right, but a verdict for sixty pounds damages was found against them. 'And therefore,' says the roll, 'it is considered that the said Prior recover his said damages against them, and that the said William and the others henceforth on Fridays on which the said Prior has his said market do not expose for sale their vendible wares within the town of Coventry elsewhere than in the said market.'[3] If this is not an 'injunction' and a 'perpetual injunction,' we hardly know what to call it.[4] In divers quarters much evidence seems to be

[1] See our vol. i. p. xxix.
[2] See below, p. 58.
[3] See below, p. 74.
[4] How could this 'injunction,' if such we call it, have been enforced? It seems possible that if the defendants had repeated the tort, the plaintiff might have obtained a specially worded writ reciting the breach of the 'injunction,' and that in this new action the judgment would be that the defendants be taken and imprisoned, and not merely that

collecting which tends to show that the number of thoroughly new ideas introduced by the Chancellors of the later middle ages was by no means large. But these premonitions of Equity, if such we may style them, have taken us beyond our beat.

As to the printing of two and even three reports of a single case, we are painfully aware that it delays progress, insomuch that the end of Edward's reign of twenty years seems immeasurably remote. In this matter an editor would wish to be the servant of the Society, still we would ask our readers to examine with some care a few of the longer cases that are doubly or trebly reported before they decide that they are seeing the same story too many times. For our own part we can say that the second or the third report has often taught us much that we should not have learnt from any one version of the debate. The reasoning of these medieval lawyers is delicate, while as yet reporting is rude, and an argument that looks flat when seen with one eye sometimes assumes three dimensions when two eyes are brought to bear upon it. We would even submit that it would be more instructive to possess all the extant reports from five years than to have the whole twenty years less thoroughly illuminated, for we are not going to cite these old books in court, and the play of reasoning among the counsel at the bar is much more interesting than any series of decided points could be. Once or twice by way of experiment we have endeavoured to make a text which would combine various versions,[1] but the saving of space has been too small to balance the loss in perspicuity. Some space we hope to save in future volumes by bringing into one mass the brief notes that are inserted among the reported debates. These brief notes deserve preservation, but we will confess to thinking them the least valuable part of our materials, especially as they can seldom be checked by the record. It is the long, well-argued debates that take us beneath the surface and enable us to understand the minds of our ancestors.[2]

We have upon our hands thirteen manuscripts, or rather, since one of them is at present giving us mere abstracts similar to our modern head-notes,[3] we will say twelve. From the relation that they bear to each other it is fairly plain that a good many intermediate links have existed, and some of them may yet exist. The book that

they be amerced. It is to be remembered that the action known as *contra formam feoffamenti* (see below, pp. 93, 95) was based on the breach of a royal prohibition; and the same had been true of the action of waste.

[1] See below, p. 182.

[2] See, for example, the long case (pp. 44-52) touching the question whether a man was 'in' or 'out' of a reversion.

[3] This is Lincoln's Inn, 137 (2), our *Z*.

Selden saw at the Inner Temple we have not yet identified. Why there should be so many more manuscripts for our time than there are for some later times—for example, for that which has had the good fortune to be studied by Mr. Pike—is a question not easily answered. There is, however, some evidence which seems to show that the legislative activity of Edward I.'s reign had one proximate consequence which must have been gratifying and stimulating to the legal profession. On 18 September 1309 the number of justices of the Common Bench was raised from four to six because, since the number of pleas had become greater than ever it was before, it was necessary to have 'two places,' or in other words (as we understand the matter) it was necessary that the Court should sit in two divisions. Possibly to this may be due the fact that some cases are found only in one set of manuscripts and other cases only in another set; but as yet we have not been able to verify this suggestion in any decisive manner.[1]

We must reserve for some other occasion an adequate account of a curiously interesting trait peculiar to one of the books at the Museum: that one, namely, which distributes its matter under legal rubrics.[2] This feature consists of notes which are mixed up with the reports, but which tell us of conversations between the maker of this book, or of its exemplar, and some of his friends. These friends, so far as we have been able to trace them, seem for the more part to be young men who are not yet in practice, or at any rate not in that sort of practice which is worthy to be reported. We seem to be brought into close contact with some enthusiastic student of the law, who is diligently collecting all that is colligible, but who does not give us his own name. A little more of him we may endeavour to say at another time; but we will not delay to mention a certain passage in his book, for some of our readers may be able and willing to elucidate some words that seem well worthy of elucidation.

In the first place we have a short report of a discussion in court.[3] 'One A complains that B wrongfully took his lambs.—*Touth*[*eby*] avowed etc. and for the reason that he found them in his several, damage feasant.—*Scrop.* We tell you that the place where the taking was made was our common pasture: ready to aver.—*Touth.* Not

[1] See Calendar of Close Rolls, 1307, 1313, p. 231. The important words are 'pur ceo q'il covent avoir deus places par la multitude des plez qe plus est ore qe unques ne fust en nuly temps.' One of the two new justices, namely, William de Bourn, is not mentioned in such fines as we have examined. See also Foss, Judges, iii. 240. Possibly he was appointed to discharge routine duty, or, as we might say, to sit in chambers.

[2] This is our MS. *Y*, mentioned above on p. xi.

[3] MS. *Y*, f. 170d.

common for severed lambs.—*Scrop.* They do not deny that this is our[1] common, but say "not for severed lambs," and we demand judgment whether etc., since sheep and lambs are beasts of common. —*Touth.* Not common at that season of the year.—And so note how he changed his avowry, which surprised many people ("unde pluribus mirabatur"). And afterwards it was told in the Cribbe how he was received to except ("Et postea dictum fuit en le Cribbe coment il fut resceu a excepcioner") against the lambs and not the sheep. And Richard de Aldirb' said that John of Lancaster was party to an assize of novel disseisin in common of pasture by the taking of calves where the lord of the pasture conceded in court that the owner of the calves was entitled to common for all manner of animals except calves. And afterwards John Trevanion said that the lord of the pasture shall be allowed a greater advantage in answering than a commoner would have in saying that the other party had no common for such and such beasts or at such and such a time of year.'[2]

It might, we believe, be shown that the men who are here put before us as talking 'en le Cribbe' had not yet won their spurs in forensic contests; but what the Crib was we fain would know. Apparently this name might be given to a place where men fed, or again to a place that was wholly or partially enclosed by something that looked like basket-work.[3] We have thought of a common dining-room and we have thought of a part of the court set apart for students; but in the end we are asking for rather than giving information. On the other hand, chance has furnished us with some early evidence of the existence in or under Westminster Hall of 'the place called Hell.' In much later days we hear of 'Heaven' and 'Hell' as of two taverns adjoining the Hall. Fuller speaks as if part of Hell was in some sort 'under' the Exchequer Court, and reports that Hell had at one time been a prison for the King's debtors.[4] When we were searching a roll of the Common Pleas for the Hilary term of 1310, our eye fell on the story of an assault committed 'here in the hall in the place that is called Hell under the bench.'[5] Some member of the Society may similarly have happed upon 'the Crib,' and will earn our thanks if he will tell us of its nature, for these

[1] The book gives *vostre.*

[2] There are a few small difficulties in the text which it is needless to notice in the present context.

[3] See *crib* in New Engl. Dict.

[4] See the passages collected by Peter Cunningham, Handbook of London, *s.v.* Heaven.

[5] De Banco Roll, No. 180, r. 69 Mid.: 'hic in aula in loco qui vocatur Helle sub banco.'

discussions among young lawyers are of considerable interest to those who would trace the genesis of our law reports.

It only remains to say that in this volume we have not materially modified the plan that was adopted last year, though it is hoped that there are some improvements in detail, and that, if other volumes come from us, the process of amelioration will continue. We will plead guilty to a little timidity—it was not indolence—in closely adhering to one single manuscript when making our last year's text. Our endeavour now will be to correct, with due notice, what are certainly blunders when some other manuscript offers an obviously right reading; but to go beyond this in the direction of a composite text would, we feel sure, be a mistake. The transcribers of these books, as may be shown at large hereafter, held themselves very free to substitute one phrase for another, and often we are in no position to say that one of these phrases is right and another wrong, though one may seem to us a little more pointed or more luminous than the other. An assumption that the most perspicuous is 'the right,' if by 'the right' is meant the oldest, version would be exceedingly dangerous.

Finally, it is my duty to thank Mr. G. J. Turner for the expert and efficient help that he has given me in the task of searching the rolls. At the same time it is due to him to say that every mistake in this volume or in its precursor is, not constructively but actually, the editor's very own—'son tort demesne.' To the Honorary Secretary's counsel and encouragement it is in a large measure due that I am able to meet the demand for an additional volume.

LIST OF MANUSCRIPTS

A = Camb. Univ. Lib. Ff. 3, 12

B = Brit. Mus. Add. 35094

D = Linc. Inn, 139

L = Brit. Mus. Add. 25183

M = Camb. Univ. Lib. Ff. 2, 12

P = Brit. Mus. Harl. 835

Q = Brit. Mus. Harg. 210

R = Camb. Univ. Lib. Dd. 9, 64

S = Brit. Mus. Harl. 1062

T = Brit. Mus. Harl. 3639

X = Bodl. Tanner, 13

Y = Brit. Mus. Add. 35116

Z = Linc. Inn, 137 (2)

LEGAL CALENDAR

FOR THE

THIRD YEAR OF KING EDWARD II.

The third year of the reign began on 8 July, 1309. The Sunday letter was E in 1309 and D in 1310. In 1310 Easter fell on 19 April.

JUSTICES OF THE KING'S BENCH.

Roger le Brabazon, C.J.; Gilbert de Roubury; Henry Spigurnel.

JUSTICES OF THE COMMON BENCH.

William de Bereford, C.J.; Lambert de Trykyngham; Hervey de Stanton; Henry le Scrop; John de Benstede; William de Bourne.[1]

NAMES OF COUNSEL WHO ARE MENTIONED IN THIS VOLUME.

Assheley, Robert de
Cambridge (Cantebr'), John de
Claver (Clauer), John le
Denom, John de
Denom, William de
Eboraco, *see* York
Escrop, *see* Scrop
Friskeney, Walter de
Hampton, Richard de
Hedon, Robert de
Herle, William de
Hertipol, Geoffrey de
Huntingdon, Ralph de
Ingham, John de
Kingeshemede, Adam de
Kingeshemede, Simon de
Laufare, Nicholas de
Malberthorpe, Robert de
Passelew (Passeley), Edmund de
Ruston, William de
Scrop, Geoffrey le
Scoter (or Scotre), Roger
Toutheby, Gilbert de
Westcote, John de
Willughby, Richard de
York (Eboraco), John de[2]

[1] See Calendar of Close Rolls, 1307-1313, p. 231; writ of 18 September, 1309. On p. 67 of the present volume William Inge appears as a justice of assize.

[2] All the above names have been found on the rolls as those of 'narratores' who levy fines. There are, it will be noted, two Kingeshemedes and two Denoms. The form 'Denom' seems to be correct, though one Year Book habitually gives the more plausible 'Denham.' The occurrence of Ston[ore] on p. 55 is probably due to a mistake, and on p. 112 the name of 'Everwyk' (York) is preferable to that of Warwick.

THE YEAR BOOKS OF EDWARD II.

Vol. II.

SECOND AND THIRD YEARS.

PLACITA DE ANNO REGIS EDWARDI FILII REGIS EDWARDI SECUNDO.

101A. SINDELESHAM *v.* CHERLEWODE.[1]

Garde, ou piert qe si le tenaunt de la garde jour de bref purchacé le rende a estraunger hors de court, jeo recovera vers luy: ou piert qe le pere tient d'un altre fesant pur ly a chef seignour etc. le chef seygnour avera mye etc.

De garde, ou dit fut qe un H. avant l'estatut avoit enfeffé le piere l'enfant a tenir de ly mesme par service de chivaler fessant au chief seignor etc., issint qe cely qe avoit l'estat le chief seignor porta le bref.

Nota qe en un bref de garde qe un Robert et Beatrice sa femme porterent vers un Johane[2] et demaunderent la garde etc. par la resoun qe Robert piere l'enfaunt tient certeyns tenementz d'un Thomas premir baroun la femme par service de chivaler, des queux services il fust seisi etc., et les queux services pur[3] le nounage un Rodlound fitz et heir Thomas[4] deviendrent en la garde Edmunde[5] Counte de Cornwayle; le quel Counte assigna a cesti Beatrice le manier de M., a quei ceaux services sount appendauntz, en le dower B.; la quele B. fust seisi des services R. piere[6] l'enfaunt, et issint lour deforce[7] la garde etc.

Pass. Sire, nous dioms qe après la mort le piere, l'enfaunt devynt[8] en nostre garde com[9] miere l'enfaunt[10] par resoun de norture. Et vous dioms qe un Hughe, de qi le piere l'enfaunt tient par service de chivaler, porta vers nous un bref de garde, issint qe qaunt il avoit siwy vers nous jesqes a la graunt destresce, avaunt ceo qe nous fumes somouns a vostre bref de garde ou rien savioms[11] de tut, ly rendimes[12] l'enfaunt, prest etc. Et demaundoms jugement etc.

[1] *Vulg.* p. 44. Text from *A*: compared with *B*, *D*, *L*, *P*. In most respects *P* resembles *M*. See 101B. Second headnote from *D*. [2] Jone *B*; Johan *A*, *L*. [3] par *B*, *D*. [4] *Ins.* Devyn *D*. [5] Esmound *B*; Esmon *D*. [6] services par mye la mayn le pere *B*, *L*. [7] defforcea *B*. [8] demura *P*. [9] *Ins.* en la garde de sa *L*. [10] *Ins.* et *B*, *D*. [11] rien de ceo en saveymes *P*; rien de ceo en saviom *L*. [12] *Ins.* la garde *B*.

PLEAS OF THE SECOND YEAR OF KING EDWARD II. (1308–9).

101A. SINDELESHAM *v.* CHERLEWODE.[1]

In an action for a wardship by *A* against *X*, it is no defence that *X* has rendered the infant to another claimant, if the render was not made in court. *B* holds by knight service of *A*, and before *Quia emptores* enfeoffs *C* to hold of him (*B*) by an additional service, and by doing for *B* the services due from *B* to *A*. Seisin of the services at the hand of *C* will not necessarily give *A* a right to the wardship of *C's* heir. It is a question of fact whether *C* in doing the services to *A* acted as *B's* attorney or as *A's* tenant.

John of Sindelesham and Beatrice his wife brought a writ of wardship against one Felice, and demanded the wardship for the reason that John of Cherlewode, the infant's father, held certain tenements of one Thomas, the first husband of [Beatrice] by knight's service, who was seised of the services etc.; and the said services came into the wardship of Edmund Earl of Cornwall because of the nonage of one Roland, who was Thomas's son and heir, and the said Earl assigned to Beatrice in dower the manor of M., to which those services are appendant, and Beatrice was seised of the services of John, the father of the infant; and thus Felice is deforcing the demandants from the wardship etc.

Passeley. Sir, we say that after the death of the father, the infant came into ward to us as mother by reason of nurture; and we tell you that one Hugh, of whom the father of the infant held by knight's service, brought a writ of wardship against us, and when he had sued against us as far as the grand distress, but before we were summoned to your writ of wardship or knew anything about it, we rendered the infant to him. Ready etc. And we demand judgment etc.

[1] Proper names from the record.

Hervi.[1] En curt ou hors de court ?

Pass. Hors de curt.

Hervi.[2] Purceo qe tiel rendre hors de court est vostre fait demene et nent par ley,[3] purceo nous demaundoms si vous fustet tenaunt[4] le jour de soun bref purchacé ou noun.

Et pus dit *Pass.* qe un H.[5] longement devaunt[6] statut enfeffa le piere l'enfaunt de certeynz tenementz a tenir de luy par homage et par les services de une livre de comyn et de ses[7] heirs a toux jours et par ceste chartre a fair[8] a chief seignurage les services qe al tenementz appendent; dount[9] queux services qe[10] Robert piere l'enfaunt fist a Thomas chief seignour et baroun la femme[11] ceo fust[12] com[13] l'atourné Hughe, et issint tient il de H. et nient de Thomas; prest etc.

Hedon voleyt averrer la seisine Beatrice de[14] services par my la mayn le piere l'enfaunt et la seisine soun baroun. Et il fust chacé a dire le quel il teint del baroun la femme[15] et de la femme come par resoun de soun dower après la mort soun baroun ou noun. Qui sic dixit, et prest etc.[16] Et alii le revers.

101B. SINDELESHAM *v.* CHERLEWODE.[17]

Un A. porta[18] bref de dreit de garde[19] vers F. et demanda la garde de corps J. fitz et heir J. de T.[20]

Wilb. Nous ne clamoms[21] rien en la garde.

Hedone.[22] Rendez dont l'enfaunt.[23]

West. Ceo ne pooms nent; qar un T. de T. porta bref de dreit de garde vers nous, et a la grant destresce rendimes l'enfaunt. Jugement, si vers nous pussez tiel bref user.

Hedon. Nous voloms averrer qe jour de nostre bref purchacé l'enfaunt fut en vostre garde.[24]

West. Nous vous dioms qe avant qe savyoms[25] rien de[26] bref la garde fut rendu.

Stant. Ou en court ou hors de court? Qar si vous eiez rendu

[1] Herin *Vulg.*; Stant *P.* [2] Herin *Vulg.* [3] *Om.* et . . . ley *L.* [4] si vous fustes desoisour et seisi del enfaunt *L.* [5] Hughe *B.* [6] avaunt *B*, *D.* [7] ces *A.* [8] affaire *B.* [9] *Ins.* etc. *B*; *ins.* les *L.* [10] *Om.* qe *L.* [11] *Ins.* et *L.* [12] *Ins.* tout *B.* [13] fut touz *D.* [14] des *B.* [15] *Om. to after next* femme *D.* [16] il tyent de baroun la femme ou de Hug., et dit qe il tint de baroun la femme et nient de Hug., prest *B.* [17] Text from *M*: compared with *P*, *Q*. [18] Un Robert et Beatrice sa femme porterent *P.* [19] bref de garde *P.* [20] *P* gives the count as in 101A. [21] chalengoms *P.* [22] Herle *P.* [23] Rendez a nous donqes la garde *P*, *Q*. [24] purchace vous fustes seisi du corps *Q.* [25] saveymes *Q.* [26] *Ins.* vostre *Q.*

STANTON, J. In court or out of court?

Passeley. Out of court.

STANTON, J. Such a render out of court is your own act and not an act done by [compulsion of] law, so we ask you whether or not you were tenant on the day of his writ purchased?

Afterwards *Passeley* said: Long before the Statute[1] one Hugh enfeoffed the infant's father of certain tenements to hold of him and of his heirs for ever by homage and the service of one pound of cumin, and by this charter he was to do to the chief lord of the fee the services belonging to the said tenements; and the services that John, the infant's father, did to Thomas, husband of [Beatrice the demandant], as chief lord, were done by him as attorney of Hugh. And so he [the infant's father] held of Hugh and not of Thomas. Ready etc.

Hedon wished to aver Beatrice's seisin of the services by the hand of the infant's father and her husband's seisin. But he was driven to answer the question whether [the infant's father] held of the husband and, after the husband's death, of the wife by reason of her dower. And he said Yes.[2]

Issue joined.[3]

101B. SINDELESHAM *v.* CHERLEWODE.

One A. brought a writ of ward against F. and demanded wardship of the body of J., son and heir of J. of T.

Willoughby. We claim nothing in the wardship.

Hedon. Then give up the child.

Westcote. We cannot do that, for one [Hugh Fitz Baldric] brought a writ of right of ward against us, and we gave up the child at the grand distress. Judgment, whether you can use this writ against us.

Hedon. We will aver that on the day of the purchase of our writ the child was in your wardship.

Westcote. We tell you that before we knew anything of [your] writ the wardship was rendered [to Hugh].

STANTON, J. In court or out of court? If you rendered it out of

[1] Stat. 18 Edw. I. (Quia emptores).

[2] According to one MS. the averment was that the infant's father held of Beatrice's husband and not of Hugh. See our note from the record, p. 3.

[3] Another version of this case follows.

hors de court,[1] la court entende q'il demoert unqore vers vous; com[2] en autre cas, si bref d'entré soit porté vers vous, et vous dites qe vous rendistes les tenementz hors de court, sanz ceo qe ne diez qe vous n'aviez rien jour de bref purchacé, ou qe vous rendistes en court, autrement[3] ceo n'est pas r[espouns].[4]

Et pur ceo qe le rendre se fit hors de court, fut agardé q'il dissent[5] outre.

West. Sire, nous vous dioms qe Hughe Baudr'[6] enfeffa le ael l'enfaunt avaunt statut a tenir de lui[7] par les services de un livere de comyn et fesaunt[8] pour lui et pour ses heirs a chef seignourage de fee les services dues des tenementz. Jugement.

Hedone. Ceo ne put il dire, qar il est mesme[9] tenaunt, et nous seisi del homage son pere. Jugement etc.

Ber. Si le fet soit tiel com il dit, cel homage ne vous dorra par voye[10] a demaunder la garde q'il fet a seignour paramount; qe il le fet com attorné son seignour,[11] qe ne toud[12] mye la seignurye son seignour ne ne doune avauntage a celui qe le resceit.

West. Qe l'auncestre l'enfaunt tynt de H. Baudr' par les services qe nous avoms dit, prest etc. (Et avoit chartre en poyne qe le tesmoigna, et il ne fut pas tiel q'il pout cele chartre user. Par qei il joint l'averrement *ut supra*.[13])

Hedon.[14] Q'il fut nostre tenant et tynt de nous, prest etc.

Et alii econtra.

Note from the Record.

De Banco Roll, Trinity, 2 Edw. II. (No. 178), m. 234d, Surr.

Felice, sometime wife of John of Cherlewode, was summoned to answer John of Sindelesham and Beatrice his wife in a plea that she render to them John, son and heir of John of Cherlewode, whose wardship belongs to the demandants. The demandants say that one Thomas of Hurstal, formerly husband of Beatrice, held of Edmund sometime Earl of Cornwall the manors of Bedington, Purlee, and Brightwelle by homage and fealty and military service; and that he died in the Earl's homage; and that after his death the Earl seized the said manors into his hand by reason of the nonage of Roland, Thomas's son and heir, and afterwards assigned to Beatrice the manor of Bedington to hold by way of dower; and that of the manor of

[1] *Ins.* cest vostre fet demene et *P*. [2] sicum *P*. [3] *Om.* autrement *P*. [4] This speech is compressed in *Q*. [5] respoundesist *Q*. [6] Baudre *Q*. [7] *Ins.* et cez heirs *P*. [8] comyn enfesaunt *P*. [9] *Ins.* nostre *P*, *Q*. [10] title *P*, *Q*. [11] garde qar il le fet cum atourne soun seignour *P*; garde qil le *Q*, *and omit until after next* le. [12] tout *P*, *Q*. [13] prest etc. et avoms isci la chartre, mes qil ne poeit pas la chartre user il tendi daverer *P*; *sim. Q*. [14] Herle *P*.

court, it was your own act, and the Court will suppose you to have it still. Similarly, if a writ of entry be brought against you, and you say that you rendered the tenements out of court and do not say that you had nothing on the day of writ purchased, or that you made the render in court, that will be no answer.

And because the render was made out of court, it was awarded that they should answer over.

Westcote. Sir, we say that Hugh Fitz Baldric enfeoffed the child's grandfather before the Statute, to hold of him by the service of a pound of cumin and by doing for him and for his heirs to the chief lord of the fee the services due from the tenements. Judgment etc.

Hedon. He cannot say that, for he [the infant] is our tenant and we are seised of his father's homage. Judgment etc.

Bereford, J. If the facts be as [the tenant] says, this homage gives you no title to demand the wardship; for the homage that he did to the lord paramount he did as attorney of his [immediate] lord, and this does not deprive the [immediate] lord of his seignory nor give any advantage to him who receives [the homage].

Westcote. The child's ancestor held of Hugh Fitz Baldric by the services aforesaid.

And [the tenant] had in her hands a charter which proved this, but she was not one who could use that charter. So she joined the averment as above.[1]

Hedon. He was our tenant and held of us. Ready etc.

Issue joined.

Note from the Record (*continued*).

Bedington John of Cherlewode held a messuage, sixty acres of land, and two acres of meadow in Bedington by homage and fealty and the fourth part of a knight's fee; and that by reason of the assignment he attorned himself to the demandants for fealty and service; and that he died in their service; and that therefore the wardship of his said son and heir belongs to them; and that Felice unlawfully deforces it from them, to their damage laid at 100*l.*

Felice pleads that the heir's father, John, did not hold the said tenements of Thomas nor of the demandants. For she says that they were sometime in the seisin of Hugh Fitz Baldric of Chissendon[2] de la Wodecote, who held them of the said Thomas, Beatrice's late husband; and that Hugh long before the statute made concerning the buyers of land (*statutum de*

[1] Felice, the infant's mother, does not claim anything under the charter. It appears from the record that profert of this charter was made, but the demandant was allowed an averment that the tenure was not such as the charter stated.

[2] Chessington and Beddington are not far apart in Surrey.

Note from the Record (*continued*).

emptoribus terrarum editum etc.) enfeoffed the said John to hold of him, Hugh, and his heirs by the service of a pound of cumin, and by doing thence yearly to the chief lords of the fee all services due etc. for Hugh and his heirs. And Felice makes profert of a charter under Hugh's name which witnesses this. And she demands judgment.

The demandants reply that the heir's father, John, held the tenements by military service of Thomas and afterwards of the demandants as of Beatrice's dower by reason of the said assignment as aforesaid, and did not hold them of Hugh, as Felice says; and they pray that this be inquired by the country.

Issue is joined and a *venire facias* is awarded for the octave of St. Martin. A verdict was given on [25 June, 1311] the morrow of St. John Baptist in 4 Edw. II. The jurors say upon their oath that Hugh Fitz Baldric at one time held the tenements of Thomas of Hurstal by military service, and that before the making of the King's statute about feoffments (*ante statutum Regis de feoffamentis editum*) he enfeoffed John of Cherelwode, to hold of himself and his heirs, by doing therefor to Hugh and his heirs the

102A. ANON.[1]

Pax bona.

Robert conust les tenementz etc. estre le dreit B.; et pur cest reconisaunce B. graunte les tenementz a R., et ceo ly rend en ceste court, a avoir et a tenir a Robert a tot sa vie de chief seignurage etc., et après le decès Robert les tenementz rem[eyndreient][2] a C. et a ses[3] heirs de soun corps engendrés a tenir de chief seignurage etc., et si C. devye sauntz heir de soun corps[4] qe les tenementz remeygnent as dreits heirs Robert a tenir de chef[5] etc. *Berr.* demaunda qi dust fair[6] le homage.

102B. ANON.[7]

Robert conust les tenemenz contenuz en le bref estre le dreit H. etc., et pur ceste reconisance H. granta mesmes les tenemenz et ceux lui rendi en cest court, a avoir et tenir a lui et a les heirs de son corps

[1] Not in *Vulg.* Text from *A*: compared with *L*, *P*. [2] remeynent *P*; remeignent *L*. [3] ces *A*; les *P*. [4] *Ins.* engendrez *L*. [5] *Ins.* seignour *P*; *sim. L*. [6] qi freit *L*. [7] Text from *M*.

Note from the Record (*continued*).

service of a pound of cumin, and by doing therefor to the chief lords of the fee the due services for Hugh and his heirs. And they say that Thomas, understanding this, would not suffer John to attorn to Hugh for any service; and John attorned himself to Thomas for fealty and the other services thence due; so that Hugh was not during his whole life—during fourteen years—seised of the cumin or of any service of John. ('Et dicunt quod predictus Thomas, hoc perpendens, non permisit ipsum Johannem eidem Hugoni de aliquo servicio attornare; et idem Johannes de fidelitate sua et de aliis serviciis inde debitis predicto Thome se attornavit; per quod idem Hugo in tota vita sua post feoffamentum predictum [*interl.* per quatuordecim annos] de predicto cimino vel de aliquo servicio ipsius Johannis seisitus non fuit'). So they say explicitly (*precise*) that John held the tenements of Thomas, and not of Hugh. And they say that the said heir is still within age and not married. Being asked about the damages had by reason of the prosecution of the plea, they say five marks. Therefore it is considered that John and Beatrice recover against her [Felice] the wardship and likewise their damages, and that Felice be in mercy.

102A. ANON.

Limitation to heirs of a living person.

Robert makes conusance that the tenements etc. are the right of B., and for this conusance B. grants the tenements to Robert and renders them to him in this court, to have and to hold to Robert for his whole life of the chief lord [of the fee], and after the decease of Robert the tenements are to remain to C. and to the heirs of his body begotten, to hold of the chief lord [of the fee], and, if C. die without heir of his body, the tenements are to remain to the right heirs of Robert, to hold of the chief [lord of the fee] etc. Bereford, J., asked who was to do homage.[1]

102B. ANON.[2]

Robert made a conusance that the tenements contained in the writ were the right of H. etc., and for this conusance H. granted them to [Robert] and rendered them to him in this court, to have and to hold

[1] This is the note of a fine that is being levied. Bereford's doubt seems to raise the question whether what we know as the rule in Shelley's case was as yet acknowledged law. Is Robert tenant in fee simple? The important discussion in Y. B. 18 Edw. II., f. 577, suggests that there was room for differences of opinion.

[2] This may or may not be another note of the preceding case. It seemed well to bring the two notes together.

engendrez de chef seignur de fé, rendaunt a H. a tut sa vie xx. s. par an, et si Robert devie sanz heir qe les tenemenz remeignent etc.

Ber. Entendez vous qe H. purra a lui mesme reservir un tiel rente après un rendre? Noun put.

Et non admittitur sub hac forma. Et pus fut ele retret en tiele manere, scil. qe Robert conust les tenemenz estre le dreit H., et pur ceste reconisance H. granta mesmes les tenemenz a Robert et lui [1] rendi en cest court, a avoir et tenir de [2] Robert et de [3] ses heirs de son corps engendrez de H. et de ses heirs par le service de xx. s. par an etc., et si Robert devie sanz heir etc. les tenemenz remaignent a Richard frere Robert a tenir de chief seignur de fee etc.

{En [4] fin sur rendre celi a qi les tenemenz furent renduz granta certein rent al rendor a terme de vie a prendre de mesmes les tenemenz. Fu receu.}

103A. ANON.[5]

Finis, ou jeo pus mye graunter un manier a un a terme de sa vie et tailer r[emeyndre] par moytez a altres estraunges par le nouncerteynté de execucioun.

Alice de Beauchamp [6] conust les tenementz etc. estre le dreit Rauf. Et pur cel reconissaunce R. graunta mesme les tenementz a Alice et ceo luy rendy etc. a tenir a Alice a tot sa vie de chief seignour etc., et après le decès Alice, Rauf graunta la moyté de cel manier a Rauf le fitz Alice a tenir a luy et a ses [7] heirs de soun corps engendrez, et s'il devie sauntz etc. qe mesme cel moyté remeygne [8] a Robert soun friere et a les heirs de soun corps engendrez a tenir du chief seignour etc. imperpetuum. Eodem modo fuit pax tradita [9] de [10] alia medietate. Item eodem modo qaunt a ij. carués [11] de terre [12] après le decès la dame deyvent remeyndre [13] a Giles et a les heirs de soun corps engendrés, et s'il devyast [14] etc. qe mesme les tenementz remeignent a la dame.

La quel fyne *Berr.* chalanga; *primo* purceo qe la fyne ne poet estre par un bref; *secundo* purceo qe l'entier par jugement deit le remeyndre a la dame ne poet après soun decès entre [15] les ij. frieres

[1] lour *M.* [2] *Corr.* a. [3] *Corr.* a. [4] This note from *X.* [5] *Vulg.* p. 44. Text from *A*: compared with *B*, *D*, *L*, *P.* [6] Alice Beaupel *P.* [7] ces *A.* [8] *Om.* a Rauf . . . remeygne *P.* [9] tracta *or* tratta *B.* [10] et *A.* [11] acres *P.* [12] *Ins.* et *B.* [13] dame remeignent *L.* [14] *Ins.* saunz heir *P*, *L.* [15] qe lentier qe deit estre a la dame *P*, *L.*

to him and the heirs of his body begotten, of the chief lord of the fee, rendering to H. for the whole of his life 20*s.* a year, and if Robert died without an heir [of his body] the tenements were to remain etc.

Bereford, J. Think you that H. can reserve such a rent to himself after a render? He cannot.

[The note of the projected fine] was not admitted in that form. Afterwards it was redrawn thus: Robert made conusance that the tenements were the right of H., and for this conusance H. granted them to Robert and rendered them in this court, to have and to hold to Robert and the heirs of his body begotten, of H. and his heirs by the service of twenty shillings a year, and if Robert died without an heir [of his body] the tenements were to remain to Richard, brother of Robert, to hold of the chief lord of the fee etc.

{In[1] the case of a fine by way of render, the renderee granted to the renderor for life a certain rent to be taken from the tenements. This fine was received.}

103A. ANON.

A proposed fine is rejected as being too uncertain for execution to be awarded upon it, because after giving a manor to *A* for life it gives one undivided moiety to *B* and the other to *C*.

Alice of Beauchamp made conusance that the tenements etc. were the right of Ralph; and for this conusance Ralph granted the same tenements to Alice and rendered them to her [in this court], to hold to Alice for the whole of her life of the chief lord etc., and after the death of Alice Ralph granted a moiety of that manor to Ralph son of Alice, to hold to him and the heirs of his body begotten, and, should he die [without an heir of his body], the said moiety should remain to Robert his brother and to the heirs of his body begotten, to hold of the chief lord [of the fee] for ever. And in the same fashion the peace[2] was drawn as regards the other moiety [of the manor]. And in the same fashion as regards two carucates of land, namely, that after the death of the lady [Alice] the same should remain to Giles and the heirs of his body begotten, and if he should die [without an heir of his body], the same should remain to the lady [Alice].

Bereford, J., challenged [the form of] the proposed fine; first, because the fine could not be by one writ; secondly, because the entirety of the manor granted to Alice could not after her death be

[1] This note from another MS.

[2] The 'final concord' between the parties. Apparently there were cross-remainders.

estre partie par execucioun de la fyn, purceo qe le execucioun par le remeyndre,[1] et homme[2] ne poet savoir quel moyté l'un avera et quel l'autre, et issint nient certein.

Licet[3] *Hunt.*[4] dit q'il vist la fine devaunt Sirre Thomas de Weylonde[5] estre levé entre deux parties[6] ou fust terminé[7] par la fyn qe l'un[8] avera la moyté vers le southe et l'autre vers le northe. Quod videbatur *Berr.* mirum.[9]

Pass. Si deux parceners qe tenent en comune et[10] l'un eit conu la moyté qe un tenaunt[11] tient par la lay d'Engleterre,[12] la fine serroit asset bon, tot ne fust la partie[13] fait entre eaux. Et auxi un joynt tenaunce en comune.[14] Quod *Hervi* dedixit.[15] Et assignavit causam sicut[16] videbatur bonam; si[17] le tenaunt par la lay d'Engleterre veigne en court par le *quid iuris clamat* il[18] dit[19] coment il tient del heritage les ij. parceners, la curt ne ly chacera jammès de attourner. Cuius oppositum etc.[20]

West. Deux parceneres tenent en comune et devient seisi en comune, le issue de l'un parcenere ocupe l'entier, le issue del autre parcenere avera soun[21] recoverir par le mortdauncestre de la moyté. Eodem modo de tenentibus in communi.

Berr. Si l'un parcener diss[eisise][22] l'autre,[23] il demaundera la moyté; mès si un estraunge le un[24] diss[eisise], il averount lour accioun en commune. Par quey la fyn ne serra[25] pur moy receu. Et ideo etc.

103B. ANON.[26]

Alice conust etc. le dreit Rauf etc. et pur cele reconisaunce Rauf granta et rendi a Alice la moyté de manoir a tut sa vie et qe après son decès remeindreit a Roger fitz mesme cestui Alice. Et ne fut

[1] purceo qe lentr' de manoir avaunt dit ne puist apres le decees la dame entre les deux freres estre departie par executioun de la fyne *Vulg.*, *B.* [2] pur ceo qele est execut par le premer remeyndre et homme *L.*; *sim. P*; por ceo qe execucion par primer remaindre et homme *D.* [3] *Om.* Licet *P*, *L.* [4] Hedone *P.* [5] Whitelande *P.* [6] parceners *L.* [7] trove *P.* [8] luy *A.* [9] *Om.* quod . . . mirum *P*, *L.* [10] *Om.* et *B.* [11] *Om.* tenaunt *P.* [12] diengleterre *A*, *and so below.* [13] purpertie *B*, *D*, *P*; departie *L.* [14] et auxint ou il ount joint' *B*; et auxi ount joynt tenance *D.* [15] *Om.* en comune . . . dedixit *B.* [16] *Ins.* sibi *B*, *D.* [17] en comune, Hervy. Si *P*, *L.* [18] et *D*, *P.* [19] die *B.* [20] *Om.* cuius . . . etc. *P*, *L.* [21] *Om.* soun *B.* [22] disseise *B.* [23] *Ins.* ou le tenaunt en comune diss[eisise] lautre *P*, *L*; ou lun des tenantz en comune diss' lautre *D.* [24] estraunge lour *B.* [25] *Ins.* mye *B.* [26] Text from *M*: among the cases from ann. 3: compared with *P*, *S*, *T*.

divided between the two brothers by way of execution of the fine, for no one could know which moiety should belong to the one and which to the other, and so there was uncertainty. [And this he said], although *Huntingdon*[1] said that he saw a fine levied before Sir Thomas of Weyland between two parties where it was declared by the fine that one of them should have the half towards the south and the other the half towards the north. And this seemed strange to Bereford.[2]

Passeley. If there be two parceners who hold in common, and the one have made conusance of [his] moiety which is holden by a tenant by the curtesy, the fine will be good enough, although there were no partition between [the parceners]; and so if there be a joint tenancy [or tenancy] in common.

But Stanton, J., denied this, and assigned what seemed to him a good cause. If the tenant by the curtesy come into court upon the *quid iuris clamat*, and say how he holds of the heritage of the two parceners, the Court will never drive him to attorn [to the conusee of one of the parceners].[3]

Westcote. Two parceners hold in common and die seised in common, and the issue of one parcener occupies the whole; the issue of the other parcener shall have his recovery of the moiety by the mort d'ancestor. And so in the case of tenants in common.

Bereford, J. If one parcener disseise the other or one tenant in common disseise the other, [that other] shall demand the moiety. But if a stranger disseise one of them, they shall have their action in common. Wherefore, so far as I am concerned, the fine shall not be received. Therefore etc.

103b. ANON.[4]

Alice made conusance of the right [of a certain manor] to Ralph etc. Ralph granted and rendered to Alice the moiety[5] of the manor for her life, with remainder after her death to Roger her son. [The

[1] Or perhaps 'Hedon.'

[2] This last remark is not in all of our manuscripts. Weyland was dismissed from the chief justiceship of the Common Pleas in 1289.

[3] In some MSS. doubt is cast on this remark by the comment. 'The opposite of this [is law].'

[4] This seems to be an obscure note of the preceding case.

[5] *Semble* it should be 'the whole'; but after the death of the tenant for life, one moiety was to go to one son, and the other moiety to another son.

pas r[eceu] pur ceo qe la court ne voleit mye severer ceo qe fut enter[1] autrefoitz.

Pass. Autrefoitz[2] Alice conust a R., pur quele reconisance R. granta a A. le manoir enter a tute sa vie a tenir de chief seignour etc. et qe après son decès la moyté remegne a Richard soun fitz et a les heirs de soun corps engendrez et l'autre moyté[3] a Roger et a ses heirs. Et ceo ne fut pas r[ece]u[4] pur ceo qe la court ne voleyt mye severer etc.

Pass. unqore etc. et q'après le decès[5] A. remeign a Roger et a Richard et as heirs Richard et s'il devie sanz heir etc. qe les tenemenz remeignent as heirs Roger de son corps etc.

Hervi. Vous taillez primes a Roger a terme de sa vie et pus as heirs Roger de son corps etc., issint ount ses heirs fee taillé par my la conisaunce qe n'est mye r[eson].

Et nota qe si un parcener grante la reversioun de la une moyté qe a lui deveroit revertir qe son pere tynt par la ley d'Engleterre avant la purpartie fete, cele fyn ne serra mye r[eceu]: par *Hervi.*

Item par *Ber.*: qe ceo ne fut proprement dit 'B. conust a A. et pur cele reconisaunce B. granta a A. a tenir a tote sa vie de chief seignour,' pur ceo q'en cele cas naturelement A. tynt de son feffour etc.

104A. WALEWAYN *v.* BOTILER.[6]

De warantia carte, ou dit fut qe les tenementz furent donez en fee taillé par qei il ne devoient garantir por ce q'il avoit accion a demander etc.; ou dit fut q'il aveit assez par descente par qei etc.; ou il ne le dedit pas; par qei fut agardé q'il gar[antist].

Nicholas Wolwen et Margirie[7] sa femme porterunt lour bref de garrauntie de chartre vers Johan le fitz William le Botyler del manier de B.

[1] entre *M*, *S*. [2] The repetition of *autrefoitz* may be due to mistake. [3] *Om.* remegne . . . moyte *M*; *ins. P*, *S*, *T*. [4] resceu (*in full*) *S*, *T*; refuse *M*. [5] dettes *M*; deces *P*, *S*; descees *T*. [6] *Vulg.* p. 45. Text from *A*: compared with *B*, *D*, *L*, *P*. Headnote from *D*. [7] Nichol de Walyngworthe et Johane *P*; Nicho Walewayn et Johane *L*.

fine] was not received because the Court would not permit [in a fine] this severance into moieties of what was originally a single thing.

Passeley. On a former occasion Alice made conusance to [Ralph], and for that conusance [Ralph] granted the whole manor [to Alice] for her whole life to hold of the chief lord, and so that after her death a moiety should remain to Richard her son and to the heirs of his body begotten, and the other moiety to Roger and his heirs. And that fine was not received [1] on the ground of the Court's inability to provide for a severance.

Passeley.[2] After the death of Alice there is to be a remainder to Roger and Richard and to the heirs of Richard, and if he dies without an heir [of his body] the tenements are to remain to the heirs of the body of Roger etc.

Stanton, J. First you limit to Roger for the term of his life and afterwards to the heirs of Roger of his body begotten, so that his heirs get a fee tail by means of the conusance.[3] That is not reason.

And note that if before partition one parcener grants the reversion of one moiety, being that which ought to revert to him upon the death of his father who holds by the curtesy, this fine shall not be received: per Stanton, J.

And per Bereford, J. It will not do to say, '[A.] makes conusance to [B.], and for that conusance B. grants to A. to hold for his life of the chief lord,' for here A. naturally holds of his feoffor etc.

104a. WALEWAYN *v.* BOTILER.[4]

The principle that the heir in tail is barred by a lineal warranty with descended assets can be asserted, not only by way of rebutter and by way of voucher, but also in an action of warranty of charter: and this although the heir has an action of formedon pending for the recovery of the tenement.

Nicholas Walewayn and Margery his wife brought a writ of warranty of charter against William, son of John le Botyler, concerning the manor of B.

[1] Our books disagree as to whether it was not received or not refused.

[2] Apparently turning to some other point in the fine. It must not be assumed that the report of the limitations is correct.

[3] Limitations to the heirs of a person to whom a precedent life estate has been given were certainly not unknown, however they may have been construed. Stanton seems to object to the giving an estate tail in this manner.

[4] Proper names from the record. This case is Fitz., *Garraunt de chartres*, 6.

Scot. Garr[auntir] ne devoms par ceste chartre, et par la resoun qe Luc'[1] de C. dona mesmes les tenementz dount il demande la garrauntie[2] a William nostre[3] piere et a les heirs de soun corps engendretz; et nous sumes fitz et heir William par la forme du doun, et avoms accioun a demaunder les tenementz[4] par bref de forme du doun;[5] le quel bref est pendaunt en ceste court. Jugement, si nous devoms garr[auntir].

Toud. Vous ne poetz dedire qe vous n'estes le heir William,[6] et[7] dona les tenementz a Johan pere Margerie nostre femme et obliga luy et ses[8] heirs a la garrauntie; et assez vous est descendu par descente de heritage en fee simple, scil. en A., B., C., et D. etc. Par quei,[9] si nous fussoms enpledez de vous, nous vous reboteroms[10] d'accioun, ou, si nous fussoms en cas de voucher a garrauntie, nous vous liasoms[11] a la garrauntie, et[12] nostre bref de garrauntie de chartre en[13] assise de novel diseisine nous est doné en lieu de vowcher. Jugement, si vous ne nous devetz garr[auntir].

Scot. Altre est en cas de vowcher et a derreigner la garrauntie par bref de garrauntie de chartre; qe[14] par la ou il nous voet lyer par la chartre nostre piere, nous dioms *ut supra*, et qe nous avoms accioun etc. Par qei assez avoms r[espoundu][15] a la chartre q'est prove de sa accioun, qe ne chiet pas sur cours de garrauntie.[16]

Toud. Si nous fussoms enpledé *ut supra*, tot ne fust il vous rien descendu, vous garr[auntiriez],[17] et, qaunt ascun reinz vous est[18] descendu après, si averoms[19] a la value. Et pus[20] qe nostre bref de garrauntie de chartre nous est doné en lieu de vowcher et nous voloms averrir qe asset vous est descendu, jugement etc.

Berr. Voletz l'averement?

Scot. Vous tenderez a graunt[é][21] ceo qe vous voudrez.[22]

Berr. Voletz vous donqes garr[auntir]?

Scot. Si vous agardetz.

Berr. Ceste curt agardera qe vous ly garaunterez.[23]

(Et credo quod in rotulo fiebat mencio[24] quod actio sua salvetur.[25])

[1] Luce *B*, *D*, *L*. [2] *Ins.* en fee taile *P*. [3] son *B*, *D*, *L*. [4] *Ins.* en demene *P*. [5] *Om.* et avoms . . . doun *A*; *ins. B*, *D*. [6] *Ins.* du saunc *B*, *D*, *P*. [7] qi *P*. [8] ces *A*. [9] queux r' *A*. [10] rebotereymes *P*; rebotrioms *D*. [11] lyereymes *P*; lierom *L*. [12] *Ins.* per consequens *P*. [13] ou *D*. [14] et *B*, *P*. [15] resceu *Vulg*. [16] qe ne chiet en droit cum a gar' vocher *P*; *sim. L*. [17] garauntirez *P*; garantiretz *D*. [18] estes *A*; est *B*. [19] avereymes *P*. [20] depuis *D*, *P*. [21] a graunt *L*. [22] tendrez a graunte ceo qe vous voldretz *B*; tendrez en grant ceo qe vous vodrez *D*; tendrez a graunt' ceo qe vous veiez qe droit soit *P*. [23] *Sic A*; garrauntiez *B*; grantiez *D*. [24] quod continetur in rotulo *P*. [25] salvatur *P*. Et in rotulo fiet ut (?) credo quod accio sua salvetur etc. *L*.

Scoter. We owe no warranty under this charter; for one Philip gave these tenements of which warranty is demanded to John our father and the heirs of his body begotten in fee tail; and we are John's son and heir and have an action to demand these tenements by the form of the gift, and a writ [for that purpose] is pending in this court. Judgment, whether we ought to warrant.

Toudeby. You cannot deny that you are John's heir or that he gave these tenements to [us] and bound himself and his heirs to warranty; and enough [assets] has descended to you by descent of inheritance in fee simple, namely in A. B. C. and D. etc. Wherefore you must answer; for, if we were impleaded by you, we should rebut you from your action, and, if we were now in a case of voucher to warranty, we should bind you to the warranty, and [when we are attacked] in an assize of novel disseisin[1] our writ of warranty of charter is given us in lieu of a voucher. Judgment, whether you ought not to warrant us.

Scoter. The case of a voucher differs from a case in which you are to deraign the warranty by writ of warranty of charter; for, whereas you desire to bind us by our father's charter, we say what we have already said and that we have an action pending; so that we have sufficiently answered to the charter which is the proof of this action, which action does not lie in the right as does a voucher to warranty.

Toudeby. If we were impleaded as in the case that we have put, you would have to warrant although nothing had descended to you; and then, if anything descended afterwards, we should have [our recompense] in value. And, since our writ of warranty of charter is given to us in lieu of a voucher, and we are willing to aver that enough has descended to you, [we demand] judgment.

Bereford, J. Will you receive the averment?

Scoter. You will take for granted whatever you please.[2]

Bereford, J. Will you warrant then?

Scoter. Yes, if you award that we must.

Bereford, J. This Court awards that you warrant him.

[Reporter's note.] I believe that the entry on the roll mentioned that [William's] action was saved.[3]

[1] The record shows an allegation that an assize of novel disseisin had actually been brought. The defendant in such an action could not vouch a warrantor.

[2] Or 'whatever you think is right.' But the text is not very good. Whether *tendrez* comes from *tenir* or from *tendre* is one of the difficulties.

[3] This belief is not borne out by the record.

104B. ANON.[1]

Nichol de Waldene[2] porta son bref de garantie de chartre vers Johane le Botiler,[3] et counta qe a tort ne ly garanti certeyn tenemenz, et[4] mist avant chartre qe la lya a la garantie.[5]

Scocer.[6] Nous vous dioms qe ceux tenemenz furent donés a nostre pere et a nostre mere en fee taillé, et nous sumes issue,[7] et avoms action de demander les tenemenz en demene.[8] Jugement, si des tenemenz, dount nous avoms action mesmes a demander,[9] devoms garauntir.

Malb. Et nous jugement, desicum vous estes heir vostre piere d'un sank[10] et estes obligé par le fet vostre piere,[11] le quel vous avet conu, et[12] asset vous est descendu en fee simple de par vostre piere[13] etc. Jugement, si garrantir ne devetz.[14]

Ston.[15] En cas de voucher se serreit par cas r[espons] a dire 'asset vous est descendu'; mès ore nous sumes en une garantie de chartre, dount par la chartre nostre pere nous voillet lier a garantie, la quele est cause de vostre action, sicom vostre bref suppose 'unde cartam patris sui habet etc.,' et a ceo diom nous qe par ceste[16] chartre rien nous poet demander *ratione predicta*, et demandoms jugement. Et d'autrepart[17] si fyn se[18] leve,[19] nous ne serroms mye forclos a demander mesmes les tenemenz. Par qey etc.[20]

Berr. Si Nichol de Waldenne ust vouché au garrant[21] Johane[22] le Botiler, et J. ust dit q'ele[23] ne dut[24] garrantir pur ceo q'ele[25] avoit etc.,[26] ceo serreit bone respounse pur Nichol[27] a dire qe asset ly fut[28] descendu de[29] fee simple. Et il[30] demande uncore un garr[ant]; et est auxi com[31] en cas de garanty voucher; et nul autre recoverer[32] n'ad il, si noun par cest voye etc.[33] Pur qey dounqes ne ly devez garrantir,[34] depus qe il veut averrer qe asset vous est descendu?

Ston. Lour actioun est fundu sur une garr[antie] auxi com lour bref veut, qe est garr[ant] de cesti plee. Et a ceo avoms dit qe par

[1] Text from *R*: compared with *A* 2 (a report ascribed to Mich. an. 3). [2] Waltone *A* 2. [3] Johan Bovill' *A* 2. [4] *Om.* et *R*. [5] *Om.* et . . . garantie *A* 2. [6] Scot. *A* 2. [7] *Ins.* de li etc. *A* 2. [8] *Om.* en demene *A* 2. [9] *Om.* des . . . demander *A* 2. [10] heir cesti du saunk *A* 2. [11] auncestre *A*. [12] *Om.* et *R*. [13] *Om.* de . . . piere *A* 2. [14] *Om.* Jugement . . . devez *R*. [15] Scot' *A* 2. [16] cestr' *R*. [17] *Om.* all in this speech that precedes, *A* 2. [18] fust *A* 2. [19] *Ins.* etc. *A* 2. [20] forclos d'accioun et par taunt nous ne devoms mye garrantir mesmes le tenemenz *A* 2. [21] *Om.* au garrant *A* 2. [22] Jon *R*; J. *A*. [23] qil *R*, *A* 2. [24] dust *A* 2. [25] qil *R*, *A* 2. [26] qil eust accioun *A* 2. [27] *Om.* pur Nichol *R*. [28] fust *A* 2. [29] en *A* 2. [30] *Om.* il *A* 2. [31] demande la garr' qest *A* 2. [32] voie *A* 2. [33] *Om.* si . . . etc. *A* 2. [34] vowcher *A*. *Add.* item *and go on to* qaunt *in Ber.'s next speech*, *A* 2.

104B. WALEWAYN *v.* BOTILER.[1]

Nicholas Walewayn brought his writ of warranty of charter against William le Botiler, and counted that wrongfully he did not warrant him certain tenements; and he put forward a charter which bound him to the warranty.

Scoter.[2] We tell you that these tenements were given to our father and mother in fee tail, and we are issue [of their marriage] and have an action to demand the tenements in demesne. Judgment, whether we ought to warrant tenements, to recover which we ourselves have an action.

Malberthorpe. And we [demand] judgment since you are your father's heir of blood and are bound by your father's deed, and have confessed that deed, and enough [assets] has descended to you in fee simple from your father's side. Judgment, whether you ought not to warrant.

Scoter. In a case of voucher to warranty perhaps it would be an answer to say 'Enough has descended to you'; but here we are in an action of warranty of charter, and you desire to bind us to warranty by the deed of our father which is the cause of your action, as your writ supposes, for it says 'and touching which he has the charter of his father.' And to this we say that, for the reason already given, you can demand nothing from us by this charter, and we demand judgment. Moreover, if a fine were levied, we should not be foreclosed from demanding the same tenements. Wherefore etc.

BEREFORD, J. If Nicholas had vouched William to warrant, and William had said that he ought not to warrant as he had [an action of formedon to recover the tenements], it would be a good answer for Nicholas to say that assets had descended to William in fee simple. And in this case also he is demanding a warranty, just as he would be demanding a warranty if this were a case of voucher; and he has no other recovery save by this way. Why then ought not you to warrant him, since he is willing to aver that assets have descended to you?

[*Scoter.*] Their action is founded on a warranty, as is shown by their writ which is the warrant for this plea. And to that we have answered that we are not bound by this charter to warrant, for we

[1] We have already given (104A) another report of this case. A note from the record follows. See p. 10.

[2] One of our manuscripts makes Stonor counsel for the defendant.

cesti chartre ne devoms garrantir, qe nous avoms mesmes actioun a demander mesmes les tenemenz contenuz en mesme la chartre. Et si nous pledisoms en autri manere com a dire qe asset nous est descendu, donqe nous pledisoms hors de la nature de cesti bref. Et demandoms jugement, desicum nous pledoms a defere la cause de lour actioun, si a nul respounse devoms r[espoundre].

Berr. Qaunt il fut pledé par[1] assise de novele diseisine il ne purra[2] mye voucher. Mès il vous pria qe les vodrez[3] garrantir, et ceo q'il ore demande est auxi com il ust vouché. (Et pus dit :)[4] Si rien vous est[5] descendu ?

Ston.[6] ne poeyt ceo dedire.

Hervy. Pur ceo agarde cest court qe Johane garant[ise] a Nichol et qu'el etc.[7]

Note from the Record.

De Banco Roll, Trinity, 2 Edw. II. (No. 178), m. 57d, Norf.

William, son of John le Botiller of Saham, was summoned to answer Nicholas Walewayn and Margery his wife of a plea that he should warrant to them the manor of Hopton,[8] which they hold and claim to hold of him, and touching which they have a charter of his father John, whose heir he is. The demandants by Margery's attorney say that John granted, gave, and by his charter confirmed to them, Nicholas and Margaret (John's daughter), and the heirs of their bodies lawfully begotten, all his manor of Hopton in frankmarriage, to have and hold to them and the heirs of their bodies lawfully begotten, and, if it should happen that they should die without an heir of them (*de se*) lawfully begotten, then the manor should wholly revert to John and his heirs, and he bound himself and his heirs to warranty; and that one Richard of Kerbroke lately, before William of Ormesby and William Inge, the King's justices assigned to take assizes in the said county, arraigned an assize of novel disseisin against the demandants; and that they often (*sepius*) requested William to warrant; and that he refused and still refuses, to their damage laid at 200*l.* They make profert of a charter which witnesses gift and warranty in form aforesaid.

William confesses the charter to be the deed of his father, whose heir he is; but he says that he is not thereby bound to warrant the tenements to them. For he says that the tenements were at one time in the seisin of Philip, vicar of the church of Little Cressingham, who gave them to John (William's father) and his wife Cristiana (William's mother), to hold to them and the heirs begotten of the body of Cristiana etc., and, if it should happen that John and Cristiana should die without an heir begotten of the

[1] *Ins.* la *A* 2. [2] poet *A* 2. [3] voletz *A* 2. [4] et pur ceo def' *A* 2. [5] soit *A* 2; estes *R*. [6] Scot' *A* 2. [7] dedire par qei fust agarde q'il garr' etc. *A* 2.
[8] Houghton, near Saham and Cressingham (?).

ourselves have an action to demand the tenements contained in the same charter. And were we to plead in any other manner, as [for instance] if we pleaded about assets descended, we should be pleading outside the nature of this writ. So, since we plead to defeat their cause of action, we demand judgment whether we need reply to any answer [that they have given].

Bereford, J. When Nicholas was impleaded in an assize of novel disseisin [1] he could not vouch, but he prayed you to warrant the tenements, and what he now demands comes to the same thing as a voucher. (And afterwards Bereford said:) Did anything descend to you?

Scoter could not deny.

Stanton, J. Therefore this Court awards that William warrant to Nicholas and that he [be in mercy].

Note from the Record (*continued*).

body of Cristiana, or if the heirs begotten of her body should die without an heir of their bodies (*sine herede de se*), then the tenements should wholly revert to Philip and his heirs. And William makes profert of a charter which witnesses this. And he says that he is heir begotten of John and Cristiana, so that an action to demand these tenements in demesne is competent to him (*competit ei*) by the form of the said gift; and he demands judgment.

The demandants reply that William cannot disinvolve himself from the warranty in this behalf. For they said that no action is competent to him to demand the tenements by any form of gift against the deed of his father, for that he has lands and tenements in sufficiency at Saham, Lecton, Grymmeston, Bereford, and Hunyngham in the said county by hereditary descent from his father in fee simple, greatly exceeding the value of the tenements of which warranty is demanded against him; and this they are ready to aver as the Court shall award; and they demand judgment.

And William, being asked whether he has lands and tenements by hereditary descent from his father etc. as aforesaid, says that he has no need (*non habet necesse*) to answer, so it seems to him, especially in this writ of warranty of charter, as such an answer would be more suitable (*pocius competeret*) in a case where one was vouched to warranty in a plea of land than in this plea. Therefore, as he sufficiently shows that an action is competent to him as of a more ancient right by the form of the gift which Philip made to John and Cristiana, he demands judgment whether by the force of the charter which John afterwards made to the demandants he ought to be bound to warranty.

The demandants say that whereas William confesses the charter to be the deed of his father (whose heir he is), and thereby it manifestly appears

[1] In an assize of novel disseisin the defendant is allowed no opportunity of vouching. This renders necessary the action of *warantia cartae*.

Note from the Record (*continued*).

that John gave the tenements to them, to hold to them and the heirs of their bodies begotten, reserving to himself and his heirs the reversion of the tenements if they died without such an heir, and bound himself and his heirs to warranty, and whereas it cannot be denied that William has lands and tenements enough by hereditary descent in fee simple from John, and whereas, in case they lost the tenements by the said assize, they could not be assisted by a voucher to warranty or by any other remedy of law to obtain their warranty, except by this writ of warranty of charter, they demand judgment etc. (*Note continued on the opposite page.*)

105A. PIDDLE *v.* COMYN.[1]

Forma doni en le descendre ou quiteclame fut mis avaunt en bare ; et le demaundaunt fet condicional mist avaunt a defere la quiteclame, *et non recipitur etc.*

Descendere, ou piert qe si le demaundaunt cony une chose en prejudice de luy mesme et seyt nounswi, après la resuscitacion de novel bref il ly chereit en prejudice.

Forma doni en le descendere, ou une chartre ove la clause de garauntie fut mys en barre : ou dit fut qe les tenementz furent lessez en gage por etc. : et puis fut nonsuwy.

Adam de Pidele[2] porta son bref de forme de doun vers J. Comyn, et demanda certein tenemenz, les queux un P.[3] dona a Agnes sa miere et a les heirs de son corps engendrez, et les queux après la mort Agnes[4] a lui deyvent descendre par la forme.

Herle. En ceux tenemenz ne put il demander, qar Agnes sa miere, qi heir il est, nous enfeffa de mesmes ceux tenemenz par sa chartre, qe cy est, et assez ad par descent de[5] mesme ceste Agnes. Jugement, si encontre ceo fet put il rien demander.

Fris. Nous conisçoms bien le fet. Mès vous dioms qe par my ceo fet ne devoms estre barré,[6] par la reson de une composicion qe se fit entre J. et Agnes,[7] qe si Adam et[8] Agnes lui payassent le jour de Touz Seyntz[9] iiij. livres qe[10] la chartre ensemblement ove[11] la terre conpris deinz la chartre lour fut baillé[12] sauf a ly son terme q'il avoit en la dite terre. Et mist avant un escript[13] qe ceo tesmoigna. A quel jour Adam vint et lui tendi sa paye, et pus en cea ad[14] fet et

[1] Text from *M* : compared with *P*, *L*, *Q*. Headnotes from *P*, *A*, *D* respectively. [2] Adam Codel *P* ; Peodele *L* ; Godel *Q*. [3] Peres *P*, *L* ; Piers *Q*. [4] Alice *M*. [5] assez vous est descendu de *P* ; *sim. Q*. [6] Adam conust et dist qe le fait ne luy deveroit pas grever *Q*. [7] *Ins.* la mere Adam *P*, *L*. [8] ou *L*, *Q*. [9] *Ins.* tel an *P*, *L*. [10] qe J. li livereyt *P*. [11] et *P*. [12] chartre rebaylereit *P* ; *sim. L*. [13] *Ins.* endente *P*, *L* ; avant fait *Q*. [14] paye a ly et unqore *P*.

Note from the Record (*continued*).

And because William confesses the charter to be the deed of John his father (whose heir he is), and therein is expressly contained that John gave the manor to the demandants in the form aforesaid and bound himself and his heirs to warranty, and because it cannot be denied that William has lands and tenements by hereditary descent in fee simple from the same John his father etc. to the value of the said manor, therefore it is awarded that [William][1] warrant them and be in mercy for not warranting before (*prius*).

105A. PIDDLE *v.* COMYN.[2]

In an action of formedon in the descender against the feoffee of the donee in tail, the tenant pleaded that the demandant was barred by warranty and descended assets. The demandant confessed the warranty but denied the descent of assets, and was nonsuited. A similar action is now brought between the same parties. Is the demandant estopped by his pleadings in the former action from alleging that the feoffment was subject to a condition witnessed by another deed and was in effect a gage to secure a loan, payment of which was duly tendered? *Semble* that he is estopped.

Adam of Piddle brought his writ of formedon against J. Comyn and demanded certain tenements which one P. gave to Agnes his [Adam's] mother and to the heirs of her body begotten, and which after her death ought to descend to him by the form [of the gift].

Herle. In these tenements he can make no demand, for Agnes, his mother, whose heir he is, enfeoffed us of the same tenements by her charter, which we produce, and he has enough [assets] by descent from the same Agnes. Judgment, whether contrary to this deed he can demand anything.

Friskeney. We freely confess the deed, but tell you that by this we ought not to be barred; for a composition was made between John and Agnes to the effect that if Adam and Agnes on the day of All Saints in such a year paid to [John] four pounds, then the charter and the land therein comprised should be redelivered to them, saving to [John] the term that he had in the land. (And [Adam] produced an indented writing that witnessed this, and [added that] on the day

[1] The margin of the roll is ragged.

[2] Proper names from the record.

unqore est prest. Jugement, si par my cele chartre, la quele est defete par soun fet[1] demene, nous pussent barrer.

Herle. Vous[2] avez conu[3] qe c'est le fet vostre auncestre en teysaunt[4] avez granté qe assez avez par descent. Jugement, si par my le fet de cousté[5] nous pussez de ceste response[6] ouster.

Malb. Conissez cest fet qe nous mettoms avant, et pus dites qe ceo ne vous deit nuyre.

Scrop. Vous avez mis avant fet[7] a celui reboter de accion, a quel fet il ad respondu, et met[8] avant fet a meintenir sa accion,[9] q'est vostre fet demene, par qei il lour semble qe a cesti fet devez respondre.

Herle. Il ad conu la chartre, par la quele nous avoms estat, la quele est[10] symple en sey. Jugement, si a nul fet de cousté[11] condicionel devoms respondre.[12]

Pass. Nous avoms mis avant vostre fet demene qe tesmoigne nostre dit, a qei vous ne responez nent. Jugement.

Herle. Avant ces hures porta mesme cestui Adam autiel bref vers nous de mesme les tenemenz com ore fet. A quel bref nous meymes[13] avant mesme ceste chartre la quele nous mettoms[14] ore, et deymes qe assez lui fut descendu et par mesme cestui Agnes, a qei il respondi qe rien lui fut descendu et ceo tendi il de averrer,[15] en supposant qe s'il avoit par descent il[16] serroit barré. Et del hure q'il ad conu en court qe porte recorde q'il ad assez,[17] jugement com devant, s'il pusse rien demander.

Fris. Quel issue prest[18] cele plè qe vous alleggez ?

Herle. Nous alleggeoms conisance fet en court qe porte recorde ;[19] qe autre est qe si nous eusoms alleggé jugement, ou il covent[20] dire par[21] quel jugement. Et demandoms jugement.

Malb. Put estre qe le plè qe vous alleggez fut nounsuwy ; en quel cas nous ne serroms mie barré.[22] D'aultrepart, la ou homme veut barrer altre par procès de plè ou par conissance de partie,[23] il covent moustrer quel issue le plè prest[24] sur la conissance.[25]

Ber.[26] Si le demaundaunt en soun plee fet conissaunce qe chiet en avauntage du tenaunt, et puis est aparceu q'il eyt folement pledé

[1] *Om.* par soun fet *M*; par lescrit den coste *L*. [2] Ameynz vous *P*, *L*. [3] graunte, *P*, *L*. [4] en teysaunt *dubious in M*; *om. P*, *L*; et en teysaunt *Q*. [5] par nul fet costeyn *P*; *sim. L*. [6] de nostre estat *P*, *L*; de ceste revers[ioun) *Q*. [7] *Om.* fet *M*. *Ins.* la mere Adam *L*. [8] et si ad il mys *P*; *sim. Q*. [9] avaunt fet a tesmoigner son respons *L*. [10] la ou le fet est *L*. [11] *Ins.* qest *Q*. [12] si par nul fet costeyn qest condicional nous devez reboter *P*; *sim. L*. [13] mettomus *over erasure M*. [14] *Ins.* avant *Q*. [15] *Om.* et . . . averrer *P*. [16] qe si rienz li fut descendu qil *P*. [17] qe assez li est descendu *P*. [18] prit *P*; prist *L*. [19] *Om.* rest of speech *Q*. [20] jugement de court en qel cas covendreit *P*. [21] *Om.* par *P*. [22] *Om.* en . . . barre *L*. [23] conisance fete en pledaunt *P*, *L*. [24] prist *P*, *L*, *Q*. [25] *Om.* sur . . . conissance *P*, *L*. [26] *Om.* this speech *M*, *Q*. Ascribed to Herle *L*.

aforesaid Adam came and tendered the payment to [John] and has done so since and does so still. And he demanded judgment whether he could be barred by that charter, since it was defeated by [John's] own act.)

Herle. At all events you have confessed that this is your ancestor's deed, and by your silence have conceded that you have assets by descent. Judgment, if by any collateral deed you can oust us from our estate.

Malberthorpe. First confess the deed that we produce, and then [if you can] say that it ought not to hurt you.

Scrope, J. You have produced a deed to rebut the demandant from his action. To this he has answered, and he puts forward a deed to maintain his action, and that deed is your own deed; so it seems to them that you ought to answer to this deed.

Herle. [The demandant] has confessed the charter under which we have our estate, and it is in itself a simple [*i.e.* unconditional] charter. Judgment, whether we need answer to a collateral deed containing conditions.

Passeley. We have produced your own deed in witness, and to it you make no answer. Judgment.

Herle. Heretofore this same Adam brought against us a like writ for the same tenements. To it we opposed this same charter which we now produce, and we said that assets had descended to him and through this same Agnes. Thereupon he answered that nothing had descended to him and tendered to aver this, thereby supposing that if he had [assets] by descent he would be barred. And since he has [now] confessed in court that he has assets, we, as before, pray judgment whether he can demand anything.

Friskeney. And what was the issue of the plea that you allege?

Herle. We allege a confession made in a Court which bears record. Had we alleged a judgment of the Court, then it would have behoved us to show what kind of judgment it was; but that is not our case. We demand judgment.

Malberthorpe. May be the plea that you allege ended in a non-suit, and in that case we should not be barred. Moreover, when a man tries to bar another by [pleading] the process of a plea or a confession made in pleading, he must show what was the issue of the plea in which the confession was made.

Bereford, J. If the demandant in his plea concedes something which is advantageous to the tenant and then perceives that he has

et est nounsiwy, n'entendez vous pas qe s'il altrefoitz porte un autel bref vers le tenaunt qe tiele conisaunce li grevera (*quasi diceret sic*) ?

Toud. Qaunt la chartre fut mys avant pur barre, la quel chartre fut conu[1] etc., rien ne demorra q'il n'eust esté barré,[2] sauf[3] qe rien ne lui fut descendu. Estre ceo, si homme li ust[4] vouché a garrantie et il eust entré en la garrantie, il eust esté barré de accion par[5] reson du sang. Et outre ceo il conust le fet et q'il[6] ad assez par descent,[7] la quele chose lui toude accion.[8] Jugement etc.

Pass. Ne sount pas semblables la ou homme est demandant et la ou homme est vouché. Estre ceo, il ne serra[9] mye chasé a garrantir s'il n'eit assez par descent. Jugement.[10]

Et postea non fuit prosecutus.

105B. PIDDLE *v.* COMYN.[11]

Adam de Pedele porta soun bref de forme de doun en le *descendere*[12] de la seisine Anne[13] sa miere descend[aunt] a luy com a fitz[14] et heir.

Herle. Vous ne devet estre r[espondu] et par la resoun qe Anne vostre miere, qi heir etc., nous douna etc. et obliga etc. et vous avez assets par descente. Jugement etc.

Friss. Anne nostre miere lessa les tenementz en gage ove[15] R. de B., q'ore tient, par[16] iiij. livres d'argent a payer a certeyn jour, et si ele ne les payast qe les tenementz demorrassent a ly et a ses[17] heirs etc., et si ele le paiast qe ele reust[18] sa terre ; et en sureté[19] de ceo si fist une chartre et une quiteclamance ; et veez icy l'escript endenté, et[20] il ad l'autre partie, qe testmoigne ceste condicioun. Et vous dioms qe Anne tendy sa paye et nous ly tendymes et il[21] ala en defuaunt etc., et uncore li tendoms, et demaundoms jugement si par cele chartre, q'est condicionel etc., nous puisse[22] barrer.

Herle. A ceo n'avendrez, qe aultrefoitz devaunt R. de Hengham si portastes atil bref de mesmes les tenementz certayn terme etc., ou

[1] conmeu *M.* [2] *Ins.* par my le saunk *P*, *L.* [3] salve ceo *P*, *L* ; forsque *Q.* [4] homme veut *P* ; *sim. Q.* [5] *Ins.* la *P.* [6] et il *P*, *L*, *Q.* [7] *Om. to* Et postea *Q.* [8] le qel li barre daccion *P* ; le quel il toute accion *L.* [9] serroit *P.* [10] *Om.* Estre . . . jugement *L.* [11] *Vulg.* p. 45. Text from *A* : compared with *B*, *D*, and a brief note in *X.* [12] vers J. Comyn *X.* [13] Amice *B.* [14] fit *A.* [15] a *B.* [16] par *A* ; pur *B.* [17] ces *A.* [18] resceut *D.* [19] furete *A.* [20] dount *B*, *D.* [21] ele *A* ; il *B.* [22] puissetz *B* ; pussez *D.*

pleaded foolishly and is nonsuited, do not you think that, if afterwards he brings a similar writ against the tenant, this confession of his will impede him? (He implied that it would.)

Toudeby. When the charter had been put forward as a bar and had been confessed, nothing prevented [the demandant] from being barred but [his plea] that nothing had descended to him. Besides, if [we] had vouched him to warranty, and he had entered into the warranty, he would have been barred from his action by reason of the blood.[1] And besides this, [the tenant] has confessed the deed and that he has assets by descent, and this deprives him of his action. Judgment etc.

Passeley. The case in which a man is demandant and that in which he is vouchee are not alike. Moreover, he will not be driven to warrant unless he has assets by descent.

Afterwards [the demandant] was nonsuited.

105B. PIDDLE *v.* COMYN.

Adam of Piddle brought his writ of formedon in the descender on the seisin of Agnes his mother, [making] a descent to him as son and heir.

Herle. You ought not to be received; for Agnes, your mother, whose heir [you claim to be] gave us [these tenements] and bound [herself and her heirs to warranty], and you have enough [assets] by descent. Judgment etc.

Friskeney. Agnes, our mother, leased these tenements in gage to the tenant in this action for four pounds of money to be paid on a certain day, and, should she not pay them, the tenements were to remain to him and his heirs; but, if she paid them, she was to have her land again; and in surety of this she made a charter and a quitclaim. Lo here is the indented writing, of which he has the other part, and it witnesses this condition. And we tell you that Agnes tendered payment, and we tendered it, but he ran away [to avoid the tender]. And we still make the tender, and pray judgment whether he can bar us by this charter which is conditional, etc.

Herle. To that you cannot get; for on a former occasion before Ralph of Hengham you brought a like writ for the same tenements in

[1] This apparently means that if the heir in tail entered into the warranty, he would thereby be deprived of his formedon even though he had no assets by descent.

nous botames mesme ceo fait countre vous com barre, et vous deistes [1] qe ceo fait ne vous dust barrer, purceo qe vous n'avietz rien par descente. Et demaundoms jugement, depus qe a tiel houre grauntastes le fait estre simple en ly mesme et sauntz condiciouns, si ore pussez estre receu d'averer par pays qe le fait soit condiciounel.

Toud. En taunt com vous conistes [2] le fait, si grauntastes si un estraunge ust vers ly demaundé qe vous serrez lyé a la garrauntie ; par qei il semble qe ore [3] a dire qe ceo fait soit condicionel depus qe si homme fust en le cas le remenaunt cheyreit tut sur vaillaunce etc.[4]

Pass. Il ne garrauntera [5] jammès en fee taillé la ou rein ne luy soit descendu.[6]

Herle. Nous voloms averir qe asset luy est descendu.

Friss. La paroule ne prist nulle issue ; par qei ous entendomps qe par ceo plee ne devoms estre barré.

{*Fr.*[7] Quel issu prist le plè ?

Herle. Jeo ne me eid pas par l'issu, ne par le jugement, enz par vostre conisaunce.}

Berr. Si le [8] demaundaunt en soun plee fait conisaunce al tenaunt et en avauntage del tenaunt et pus est aperceu q'il ad malement pledé et est nounsuy, n'entendetz vous mye qe, si altrefoitz il [9] porte atiel bref vers le tenaunt, qe cele conisaunce luy grevera (*quasi diceret sic*) ?

Et postea non fuit [10] prosecutus. Et credo [11] quod cautela fuit quare non placitaverat [12] per quieteclamacionem ideo [13] quod prius non fuit deducta.[14]

Note from the Record.

De Banco Roll, Trinity, 2 Edw. II. (No. 178), r. 41d, Worc.

Adam of Pydele [15] demands against John Comyn half a virgate of land (except the third part of an acre) in Northwyke, near (*iuxta*) Worcester, which Master John le Fiz Peres of Worcester gave to Agnes of Pydele and the heirs of her body issuing, and which after her death ought to descend by the form of the gift to the demandant as her son and heir.

The tenant pleads that the demandant can claim no right. For he says that Agnes gave, granted, and confirmed to the tenant the said tenements, to hold to the tenant and his heirs of the chief lords of the fee for ever, and

[1] *A* repeats some previous words. [2] conisseistis *B*. [3] ceo *A* ; ore *B*. [4] *Om.* qe . . . etc., *and substitute* qe avaunt ces hours vous lavez graunte vous navendrez pas, *B over erasure*. *D agrees with A*. [5] *Semble* grauntera *A* ; garrantera *B* ; garantira *D*. [6] *Add.* Credo quod sic, *interl. B*. [7] From the short version in *X*. [8] la *A*. [9] *Om.* il *A*. [10] fuit non *B*, *D*. [11] ideo *A* ; credo *D*. [12] placitaverunt *D*. [13] *Om.* ideo *D*. [14] quia prius fuit dedictus *B* ; quod prius non fuit dedictus (?) *D*. [15] North Piddle in Worcestershire.

a certain [year and] term; and we then put forward this same deed against you by way of bar, and you said that the deed ought not to bar you because you had nothing by descent. And, since you at that time granted that the deed was in itself simple, and not conditional, we demand judgment whether you can now be received to aver by the country that the deed was conditional.

Toudeby. Inasmuch as you [the demandant] confessed the deed, you conceded that if a stranger had demanded against him [the tenant], you would have been bound to warranty. Therefore it seems that you cannot be received to say that the deed was conditional, since in the supposed case [that of a stranger demanding] there could be no further question except as to the value of the assets.[1]

Passeley. He will never have to warrant in fee tail where nothing has descended to him.[2]

Herle. We will aver that enough has descended to him.

Friskeney. The cause was never brought to an issue. Therefore we do not understand that we ought to be barred by the plea. What issue had the plea?

Herle. I am not relying on its issue, nor upon a judgment. I rely upon your admission.

Bereford, J. If the demandant in his plea makes an admission to the tenant and to the tenant's advantage and afterwards perceives that he has pleaded badly and is nonsuited, do not you think that, if afterwards he brings a similar writ against the tenant, this admission would be prejudicial to him? (He implied that it would be.)

Afterwards [the demandant] was nonsuited. (And I believe that this was a clever move, because he had not pleaded upon the quitclaim since it had not previously been denied.[3])

Note from the Record (*continued*).

obliged herself and her heirs to warrant the same to the tenant and his heirs. And he makes profert of a charter under Agnes's name which witnesses this. So he demands judgment whether (since the demandant would be bound to warrant him if he were impleaded by another) the

[1] Translation dubious. See the remark ascribed to Toudeby in the previous report (105A). In one manuscript (*B*) a more commonplace phrase has been introduced by a corrector.

[2] An annotator says 'I believe that [he will].'

[3] The text is uncertain, and the meaning obscure. Perhaps we should say 'And I believe that not pleading the quitclaim was a clever move, since its execution had previously been denied.' We do not, however, see what the quitclaim was. Was it the indenture mentioned in the record?

Note from the Record (*continued*).

demandant can have an action, especially (*maxime*) as lands and tenements in sufficiency have descended to him from Agnes his mother, whose heir he is.

The demandant confesses that the charter is his mother's deed; but he says that it ought not to prejudice him. For he says that the tenant heretofore, to wit, on [8 April, 1294] the Thursday next after St. Ambrose, 22 Edw. I., lent (*accomodavit*) to Agnes and her son, the demandant, four pounds sterling to be paid to him, the tenant, on the day of All Souls [2 Nov.] next following, and if they should not render the money on that day, they [the demandant and his mother] granted that the said tenements should remain to the tenant and his heirs for ever according to the form of the said charter etc., and if they should render the money on that day, then the said charter should thenceforth be void (*pro nulla haberetur*). And he makes profert of one 'part' of an indented writing which witnesses the premises in manner aforesaid.

The demandant's replication proceeds to allege that on the said day of All Souls he and his mother tendered the money to the tenant; and that the tenant refused to receive it; and that the demandant still is ready to render it to the tenant here in court.

The tenant rejoins that the demandant can derive no assistance from the said writing of covenant (*per scriptum predictum convencionale subveniri non debet*). For he says that before now in the court of King Edward I. there was a plea between the demandant and the tenant as

106A. ANON.[1]

Detenu de chateux, ou executours furent receus saunt fait, et la party ne se pout alayer. De detenu de chateux por executours, ou il furent responduz sanz especialté; et la partie voleit estre a sa lei et ne poeit mye, por ceo qe ceo fut d'autri fait, scil. entre ly et lour testatour.

Deux executours porterent un bref de detenu de chateux,[2] et desount qe lour testatour li avoit baillé chateux a la vaillaunce de xxv. mars, nomement etc.,[3] a bailler[4] a ly a sa volunté, et eaux li prierent[5] qe il les rendisseit com as executours après sa mort etc., il rendre countredist[6] et unqore etc.

Pass. Quei avez du baille?

Rustone. Bon pays.

Pass. Et nous jugement depus qe ceo chiet en especialté, si vous

[1] *Vulg.* p. 45. Text from *A*: compared with *B*, *D*, *L*, *P*. Second part of note from *B*. [2] *Ins.* vers un home *B*, *D*. [3] v. saks de leyne *P*. [4] rebayller arere *P*; rebailler *L*. [5] et il en sa vie lour pria *P*. [6] ne voloient *P*.

Note from the Record (*continued*).

to this moiety that is now demanded, by a similar writ of formedon; and that the tenant then produced the same charter that he now produces; and that the demandant then simply confessed it to be his mother's deed without any condition, but said that he ought not thereby to be precluded from action, since no tenements had descended to him from his mother in fee simple. And whereas the demandant before now, in a court that bears record, simply and without condition confessed the deed to be his mother's (whose heir he is), the tenant demands judgment whether Adam ought now to be admitted to allege that the charter was delivered to the tenant conditionally.

The demandant confesses that there was this plea, and that he then simply confessed the charter etc.; but he says that this ought not to prejudice him, for no judgment was ever rendered on the said plea. And he demands judgment, since the tenant cannot show that the said plea had any final issue by judgment rendered thereon.

A day is given to hear judgment here on the morrow of Martinmas.[1]

In MS. Y. f. 160 d there is a report of what seems to be the earlier case between the same parties. In answer to the tenant's plea of warranty with assets, Passeley tells the story of the condition, but Bereford intimates that a 'simple' charter of feoffment is not to be avoided in this manner. Thereupon Passeley 'entendy q'il [ne] poeit estre aidé par les escritz' and denied the descent of assets. On this denial issue was joined.

106A. ANON.[2]

Without specialty executors can maintain detinue for chattels bailed by the testator, and in this action wager of law will not be allowed. The right of the executors to bring the action is upheld against the objection that these particular chattels are not mentioned in the will.

Two executors brought a writ of detinue of chattels, and said that their testator bailed to [the defendant] chattels, to wit, five sacks of wool, to the value of five-and-twenty marks, for rebailment to [their testator] at his will, and that their testator in his lifetime had demanded redelivery, and that they as executors had done so after his death, but that [the defendant] had refused and still [refuses].

Passeley. What have you for the bailment?

Ruston. A good [jury of the] country.

Passeley. Then, since this is a matter which lies in specialty, we

[1] It will be observed that this record does not show a nonsuit, but leaves the parties awaiting judgment.

[2] This case is Fitz., *Ley*, 56, where the only point that is noticed is that the wager of law was not allowed.

q'estes[1] executours en detenu de chateux d'aultri baille devetz saunz especialté estre r[espoundu].

Roston. Ceo chiet en conissaunce du pays, et nous le voloms averer. Par quei etc.[2]

Berr. Cest accioun[3] est favorable, et purceo qaunt qe ley poet[4] suffrere[5] nous le voloms meyntenir. Et purceo r[esponez] outre.

Pass. Qe nul chatel en la maniere com il ad counté ne nous bailla, prest a faire encountre ly et encountre sa siwte etc.[6] Par quei etc.

Roston. A la ley n'avendrez mye, qar ceo chiet en conissaunce du pays.

Pass. De pir condicioun ne serroms vers vous qe nous ne serroms vers le testatour. Mès vers le testatour etc.[7] Ergo etc.

Roston. Nyent en detenue des chateux.

Berr.[8] Si les parties entre queux le contract fust fait[9] principalment furent[10] issint ambedeux, il serroit a sa lay en detenue des chateux etc. auxi bien com en aultre cas. Mès en ceo cas nyent, qar d'aultri fait etc. Mès jeo n'ay mie veu en tiel cas l'alayement encountre executours, qar le bref ne veut pas *debet* ne *debuit*, mès *detinet*.[11]

Pass. Sire, c'est de[12] moun fait demene a ceo qe eux nous mettent[13] sur.

Berr. Vous ne serretz cest an[14] receu a vostre ley par nous. Et purceo jeo loo[15] qe vous r[esponez].[16]

Pass. Qe nul chatel de luy ne resceut en la maniere com il en ad counté,[17] prest d'averer par paiys.[18]

Et ideo ad patriam etc.

106B. ANON.[19]

Les executours du testament[20] Robert de Roos[21] porterent bref de detenue de chateux vers un J., et demanderent xx. livres de chateux par la reson qe mesme cely Robert, qe executours eus sont, ly bayla

[1] nestes forsqe *P.* [2] averer par qaunt qe ceste court agarde *P*; *sim. L.* [3] Ceste chose *P.* [4] veot *Vulg.* [5] sofrir *L*; soeffrer *D.* [6] *Ins.* per qauntqe ceste court agarde *B*; par qaunqe etc. *D.* [7] *Om.* mes . . . etc. *B*, *D*; mes encontre sa sute nous serreyimes a nostre ley *P*; *sim. L.* [8] *Om.* this speech *B.* [9] contract se prist *P.* [10] fussent *D*, *L.* [11] *Om.* last sentence *A*, *D*, *L.* Taken from *P.* [12] *Om.* de *P*, *L.* [13] mette *A*; qil mette *B.* [14] *Om.* cest an *L.* [15] leo *L.* [16] qe vous recevez l'averement *P.* [17] *Ins.* vers nous *B.* [18] prest etc. *B.* [19] Text from *R*: compared with *A* 2 (Mich. an. 3). [20] *Om.* du testament *A* 2. [21] Robert Rous *A* 2.

demand judgment whether you who are executors can be received without specialty in detinue of chattels on another's bailment.

Ruston. [Such a matter] falls within the knowledge of the country, and we will aver it. Wherefore etc.

Bereford, J. This action is to be favoured. Therefore, so far as the law will permit, we will maintain it. So answer over.

Passeley. We are ready to make [our law] against them and against their suit, that he [the testator] bailed no chattel to us in the manner in which they have counted. Wherefore etc.

Ruston. To the law you shall not get, for this falls within the knowledge of the country.

Passeley. We ought to be in no worse condition against you than that in which we should have been against the testator. But against the testator we might have waged our law. *Ergo* etc.

Ruston. Not so in detinue of chattels.

Bereford, J. If both the parties between whom the contract was originally made were here, [the defendant] would be at his law in detinue of chattels as well as in other cases. But that is not so here, for the act of a third person [is in question]. I have not seen in such a case wager of law against executors, for the writ says neither *debet* nor *debuit*, but only *detinet*.

Passeley. But, Sir, the fact surmised against me is an act of my own.

Bereford, J. Not this twelvemonth shall you be received to your law by us. So my advice is that you receive the averment.

Passeley. Ready to aver by the country that we received no chattel from him in the manner in which he has counted.

So to the country etc.[1]

106b. ANON.

The executors of the testament of Robert of Roos brought a writ of detinue of chattels against one J., and demanded twenty pounds' worth of chattels, for the reason that Robert, whose executors they

[1] A second and in certain respects a fuller report of this case follows. In some manuscripts the case is found among the pleas of the third year.

v.[1] saks de leyne a payer a sa volunté. Il en sa vie sovent les demanda, et eux après sa mort com executours.[2]

Pass. Vous les demandetz com executours : qe avet de ceo qe vous estes executours ?

Ruston mist avant un testament etc.

Pass. Vous n'estes pas executours de ceux chateux, qar le testament ne fet pas mencioun de ceux chateux.

Berr. Il sont executours de tous les[3] biens a ly dues. Pur ceo[4] respoundez etc.

Pass. Il demande ceux xx. livres[5] com deus autri persone et moustrent nul especiauté.[6] Jugement, si sanz especiauté devoms[7] etc.

Rustone. Nous voloms averer qe vous receutes les chateux de[8] nostre testatour et de son bayl,[9] et vous les avetz detenu, a qy vous ne respoundet mie. Jugement de vous com noun defendu.[10] Si vous voletz dedire, prest etc.[11]

Pass. Et nous jugement, desicum vous estes autre persone, et vous ne mostrez mie especiauté (*ut prius*) : jugement.

Berr. C'est[12] chose dount pays peut avoir conysaunce, par qey asset ly suffit d'averer le bayl.[13]

Pass. Qe nous ne resumes nul chatëux de son bayl.[14] Prest par nostre[15] lay.

Rustone. A la lay ne avendrez vous mye de[16] chose dount pays peut avoir conusaunce, qar vous la leyne resceutes en charettes,[17] et de choce[18] qe poet estre trié par pais la ley ne deit estre receu.[19] Prest etc.

Berr. Vostre maxime est trop large, qe[20] vous dites qe de chose dount pays pout avoir conisaunce home ne serra mye r[eceu] a sa ley,[21] qar en aukuny[22] cas home serra resceu[23] e aukuny ne mye.[24]

Herry a *Pass.*[25] Volez l'averement ou noun ?[26] qar a vostre[27] ley ne avendrez vous mye.

Pass. Nous ne r[eceumes] nul[28] chateux ne nul[29] de son bail.[30] Prest etc.

Et alii econtra.[31]

[1] vj. *A* 2. [2] leyne etc. *A* 2. [3] le *R.* [4] qei *A* 2. [5] ceux etc. *A* 2. [6] *Om.* et . . . especiaute *A* 2. [7] *Om.* devoms *A* 2. [8] du baillif *A* 2. [9] testatour a rebailler *A* 2. [10] descendu *R.* [11] *Om.* de . . . etc. *A* 2. [12] Ceste *R*, *A* 2. [13] *Om.* le bayl *A* 2. [14] baill' *A* 2. [15] sa *A* 2. [16] qe ceste [=c'est] une *A* 2. [17] *Om.* qar . . . charettes *A* 2. [18] choce *A* 2. [19] *Om.* et . . . receu *R.* *From* *A* 2. [20] qaunt *A* 2. [21] pays etc. *A* 2. [22] ascun *A* 2. [23] home etc. *A* 2. [24] et en ascun cas nient *A* 2. [25] *Om.* a Pass. *A* 2. [26] *Om.* ou noun *A* 2. [27] la *A* 2. [28] resceumes pas ceaux *A* 2. [29] *Om.* ne nul *A* 2. [30] baill' *A* 2. [31] *Om.* et . . . econtra *R.*

are, bailed to him five sacks of wool for redelivery at his [Robert's] will. [Robert] in his lifetime often demanded [redelivery], and they as executors have done so since his death.

Passeley. You demand them as executors: what have you to show that you are executors?

Ruston put forward a testament etc.

Passeley. You are not executors of these chattels, for the testament makes no mention of these chattels.

Bereford, J. They are executors of all goods due to him. So answer.

Passeley. They demand twenty pounds' worth [of goods] as due to a person other [than themselves], and they show no specialty. Judgment, whether without a specialty etc.

Ruston. We will aver that you received the chattels from our testator and by his bailment, and you have detained them. To this you make no answer. Judgment against you, as against the undefended. If you will deny, we are ready etc.

Passeley. And, since you are other than [the bailor], we too demand judgment whether (as before).

Bereford, J. This is a matter whereof the country may have knowledge, therefore it is enough for him to aver the bailment.

Passeley. We received no chattels by his bailment. Ready to [show this] by our law.

Ruston. To the law you shall not get about a matter of which the country can have knowledge, for you received the wool in carts,[1] and touching a matter that can be tried by the country the law ought not to be received.

Bereford, J. Your maxim, when you say that a man shall not be received to his law touching a matter whereof the country may have knowledge, is too large. In some cases he shall and in others he shall not.

Stanton, J., to *Passeley.* Will you receive the averment? for to your law you will not get.

Passeley. We received no chattels by his bailment. Ready etc.

Issue joined.

[1] The remark about the reception of the wool in carts has only been found in one manuscript.

107. ANON.[1]

Cessavit de chaunterie ou le bref fu bon non obstante q'il ne voleit 'quod de eo tenet.'

Nota qe un *cessavit per biennium* de chaunterie etc. Et fust le bref primes chalangé pur ceo qu'il voleyt 'pro anima sua et successorum' ou nul lay[2] homme forspris le Roi ne deit successour etc.[3] Et par aultre resoun, le *cessavit* est doné par statut qe dust estre de tiel fourme 'quod de eo tenet per certa servicia et quod ad ipsum reverti debet, eo quod predictus C. in faciendo etc. per biennium iam[4] cessavit'; et en soun counte dust il avoir fait sa declaracioun[5] par qei les tenementz furent donetz; et[6] il ad mys en soun bref ceo qu'il dust avoir mys en soun counte. Jugement etc. *Hiis non obstantibus* le bref fust agardé bon par les justices, coment qe le bref ne voleit[7] 'quod de eo tenet.'

108. ANON.[8]

Un Robert graunta et rendy les tenementz etc. a W. a tenir a tot la vie W. de Robert et de ses[9] heyrs par une rose par an et fesaunt[10] a chief etc.[11] pur ly les services dues etc., et après le decès W. a B. *in forma predicta*, et après le decès B. qe les tenementz retornent[12] as dreits heirs[13] Robert etc.

109. ANON.[14]

Nota qe les ij. defendauntz en play de dette[15] fyrent lour ley *quilibet pro se* etc.

[1] *Vulg.* p. 46. Text from *A*: compared with *B*, *D*, *L*, *P*. [2] leys *B*, *D*. [3] avoir *B*, *L*, *P*. [4] tam *A*. [5] dust il fere declaracioun *L*, *P*. [6] *Ins.* issint *P*. [7] ne fist nule manere mencioune *B*. [8] Not in *Vulg.* or *B*. Text from *A*: compared with *D*, *L*, *P*. [9] ces *A*. [10] *Ins.* pur li *P*. [11] chief seignour *P*. [12] remeygnent *P*, *L*; retornerent *D*. [13] *Repeat* heirs *A*. [14] *Vulg.* p. 46. Text from *A*: compared with *B*, *D*, *P*. [15] *Ins.* meyntenaunt *L*, *P*; *ins.* par agarde maintenant *B*, *D*.

107. ANON.

Cessavit de cantaria. Form of the writ. Can any layman but the King have ' successors ' ?

Cessavit per biennium from chanting. The writ was challenged in the first place because it said ' for his soul and the souls of his successors,' and no layman, except the King, can have ' successors.' And (by way of further answer) the *cessavit* is given by Statute [1] and should run in this form : ' which he holds of him by certain services and which ought to revert to him because the said C. by the space of two years past has ceased in doing them ' ; and then in the count he ought to have declared for what [services] the tenements were given ; and in the present case he has put into his writ what he ought to have put into his count. And judgment was demanded. But, notwithstanding these objections, the writ was awarded good by the Justices, although it did not say ' which he holds of him.'

108. ANON.[2]

One Robert granted and rendered tenements to W., to hold for the whole life of W. of Robert and his heirs by a rose every year and by doing for him to the chief lord of the fee the services due [for the said tenements], and after the decease of W. to [A.] in the said form, and after the decease of [A.] the tenements were to return [or ' remain '] to the right heirs of Robert.

109. ANON.

Note that two defendants in a plea of debt at once by the award of the Court made their law each for himself etc.

[1] Stat. Westm. II. (13 Edw. I.) c. 41. The writs in the printed Reg. Brev. Orig. 237 b, 238 have not the words ' quod de eo tenet.'

[2] This case is Fitz., *Fynes*, 11. Fitzherbert, however, merely says that the tenements were to ' return etc.' without mentioning the heirs of the grantor. It will be seen that the manuscripts do not agree as to whether there is to be reversion or remainder.

110. ANON.[1]

Replegiari ou il excepciona a la tenure.

En une prise de avers *Herle* avowa etc., et par la resoun qe le pleyntif tient de luy etc. certeynz tenementz etc. par certeynz services, des queux services soun piere fust seisi par my la mayn soun piere. Et purceo qe etc. si avowe il.

Malm.[2] La ou il avowe par resoun q'il teint de ly taunt des tenementz etc. par[3] services etc., Sire, nous dioms qe nous[4] tenoms de ly fors taunt et ceo par les services de taunt, et qe nent des aultres[5] services vostre piere fust unqes seisi par my la mayn nostre piere, prest etc.

Et alii econtra.

111. ANON.[6]

Frisquen.[7] Alein graunte le manier qu'une Alice tient a terme de sa vie, et le quel après le decès A. a ly deyvent[8] revertir, remeignent[9] a W. et a C. sa femme et les heirs de lor deux corps engendrez a tenir du chief seignour etc. Et s'il devient[10] etc. qe mesme etc. remeignent a R. et a D.[11] et a les heirs D.[12] inperpetuum.

112. ROGES *v.* COGAN.[13]

Engettement de la terre et de heir, et voleyt le bref *eiecit*, et agardé bone.

Nota q'en un bref d'engettement de[14] garde qe voleit 'quare cum custodia[15] terre et heredis C. ad prefatum B. etc., idem R. etc. B. a custodia predicta eiecit' fust agardé bon par *Scrop* et *Lambart*, non obstante quod dictum fuit quod le 'eiecit' proprie habet relacionem ad custodiam terre, et potuit aliud[16] breve habuisse quoad heredem: sic—'quare talem heredem rapuit etc.'

West. Il ne tient pas de luy, prest etc., set de C.[17]

Et alii econtra.[18]

[1] *Vulg.* p. 46. Text from *A*: compared with *B*, *D*, *L*, *P*. [2] Toud. *P*. [3] *Ins.* tieux *L*. [4] *Ins.* ne *B*. [5] dioms qe nous ne tenoms ceux tenementz forqe par tels serviz, qaunt a lez *P*; *sim. L*. [6] *Vulg.* p. 46. Text from *A*: compared with *B*, *D*, *L*. [7] *Om.* Frisquen *B*, *L*; Frisk. *D*. [8] doit *L*. [9] remeyne *L*. [10] *Ins.* saunz *L*. [11] remeigne a D. *L*. [12] et a lour heirs *B*; et a ces heirs *L*; *om.* D. *D*. [13] *Vulg.* p. 46. Text from *A*: compared with *B*, *D*, *L*. [14] *Om.* de *A*; *ins. B*. [15] custos *A*; custodia *B*. [16] potuit tamen illud *B*. [17] *Om.* set de C. *B*, *D*. [18] *Om.* set . . . econtra *L*.

110. ANON.

Replevin: seisin of part of the services denied.

In an action for taking beasts *Herle* avowed etc. for the reason that the plaintiff holds of him certain tenements by certain services, whereof [the avowant's] father was seised by the hand of [the plaintiff's] father; and because [the services were in arrear] he avowed.

Malberthorpe. Whereas he avows by reason that [the plaintiff] holds of him so much by [certain] services, we tell you, Sir, that we hold of him only so much and only by such and such services, and that of no other services was your father seised by the hand of our father. Ready etc.

Issue joined.

111. ANON.

Friskeney. Alan grants that the manor (which one Alice holds for the term of her life and which after her death ought to revert to Alan) shall remain to W. and C. his wife and the heirs of their two bodies begotten, to hold of the chief lord etc., and if they die [without an heir of their bodies], the same shall remain to R. and to D. and to the heirs of D. for ever.[1]

112. ROGES *v.* COGAN.[2]

A writ *de eiectione custodiae* may comprise the body as well as the land of the heir.

In a writ of ejectment from wardship the writ ran thus: 'whereas the wardship of the land and heir of C. [belonged] to the said B. etc., the said R. ejected him from the said wardship.' This was adjudged good by Scrope, J., and Lambert [of Trikingham], J., notwithstanding it was said that the word 'ejected' properly had relation to the wardship of the land, and that [the plaintiff] might have had another writ for the heir, to wit, 'why he ravished' the heir.

Westcote. He held not of him but of C.

Issue joined.

[1] The exact form of the last limitation is variously stated. We must suppose that this is a fine proposed by Friskeney and accepted by the Court.

[2] This case is Fitz., *Garde*, 4.

{Un [1] A. porta bref de engettement de garde vers un W., et counta qe la garde de corps et de terrez a ly appent par la resoun etc., la vynt W. et ly engetta etc.

West. A cesti bref ne deit il estre r[espond]u, qar le bref dit 'quod custodia terre et heredis,' ou il suppose q'il est hors de terres et de corps, la ou l'actioun est divers, et en tel cas git diverse remedie, qar s'il soit osté de corps, bref de ravisement y gist. Dount nous demaundoms jugement.

Will. C'est la forme de la Chauncelerie.

Scrop. Le bref est assez bon.

West. La ou il dyt q'il tynt de ly, q'il ne tynt point, prest etc. Et alii econtra.}

Note from the Record.

De Banco Roll, Trinity, 2 Edw. II. (No. 178), r. 273, Devon.

Thomas de Cogan was summoned to answer Henry Roges why with two others he violently ejected the plaintiff from the wardship of the land and heir of John de Roges. The declaration states that John, the heir's father, held of the plaintiff land in Burche [2] by homage and fealty and 5*s.* towards a scutage of 40*s.*; and that John died in the plaintiff's homage; and that the wardship therefore belongs to the plaintiff until the lawful age of Avice, John's daughter and heir; and that the plaintiff was long in peaceful seisin of the wardship; and that the defendant and others violently ejected him from the wardship, to his damage laid at 100*l.* (*Note continued on the opposite page.*)

113. SAYM *v.* ST. JOHN.[3]

Detté porté par executour, qe mustra testament q'il fut soul executour; et fust receu, nient aresteaunt qe le defendaunt dit qe l'amynistracioun fut doné a altre par ordin[arie].

Une Dyonise de la Syme executour du testament Johan soun baroun porta soun bref [4] de xl. [5] liv.

Pass. Moustrez a la curt qe vous estes executour.[6]

West. Vcez ici le testament qe voet q'ele soul soit executour.

Pass. Il y ad un William le fitz Johan a qi l'administracioun fust doné par le ordin[arie] [7] ovesqe Dyonise, qe administra,[8] nyent nomé en le bref. Jugement.

Berr. Purceo qe le testament le voet q'ele est executour, et ceo est

[1] This alternative note from *P*: compared with *M*, *R*, *Q*. [2] Apparently Borough, close to Holcombe Rogus. [3] *Vulg.* p. 46. Text from *A*: compared with *B*, *D*, *L*, *P*. [4] *Ins.* de dette *B*, *D*, *L*. [5] x. *L*. [6] executrice *B*, *D*, *L*. [7] lordiner *B*, *D*. [8] qad administracioun *P*.

{One[1] A. brought a writ of ejectment from wardship against W., and counted that, whereas the wardship of the body and lands belonged to him by reason etc., W. came and ejected him.

Westcote. To this writ he ought not to be answered, for it speaks of the wardship of the lands and of the heir, and so he supposes that he is 'out' of the lands and of the body, whereas these are separate causes of action, for which separate remedies exist, for as to the heir's body the writ of ravishment of ward lies. So we pray judgment.

Willoughby. This is the Chancery's form.

Scrope, J. The writ is good enough.

Westcote. Whereas he says that [the heir's ancestor] held of him, we are ready to aver that he did not.

Issue joined.}

Note from the Record (*continued*).

The defendant, after a formal defence of tort and force, says that the wardship belongs to him and not to the plaintiff, for he says that the said John, father of the said heir, held the said tenements of the defendant by military service, and not of the plaintiff as the plaintiff alleges; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* for jurors is awarded for the morrow [Nov. 3] of the feast of All Souls. The objection that was taken to the form of the writ has left no trace upon the record.

113. SAYM *v.* ST. JOHN.[2]

Where there is a testament appointing an executor, the ordinary has no power to grant administration of the dead man's goods to any but the executor.

One Denise de la Syme, executor of the will of John her husband, brought her writ of debt for forty pounds.

Passeley. Show to the Court that you are executor.

Westcote. See here the testament which says that she is to be sole executor.

Passeley. There is one John, son of John, to whom administration was given by the ordinary along with Denise, and who administered, and he is not named in the writ. Judgment of the writ.

Bereford, J. Since the testament says that she is executor, and

[1] Another note of the same case.

[2] Proper names from the record.

la[1] volunté le mort, qe[2] nous n'avoms qe fair de celuy qe fust mys par le ordin[arie] s'il ne deviast saunz[3] testament, qe donqe bien covent le ordin[arie].[4] Et purceo etc.[5]

Hervi ad idem. La quitaunce celuy qe ne fust[6] fait executour[7] ne vous vaudera rien. Par quei etc.[8]

Note from the Record.

De Banco Roll, Trinity, 2 Edw. II. (No. 178), r. 264 d, Heref.

Master William of St. John, canon of the church of St. Ethelbert of Hereford, was summoned to answer Denise, executrix of the testament of John Saym, in a plea that he render to her nine marks which he unlawfully detains. The plaintiff counts that on [8 July, 1303] Monday the morrow of the Translation of St. Thomas the Martyr in 31 Edw. I. at Hereford the defendant by his writing bound himself to the said John in nine marks, to be paid, as to 60*s.* at Christmas then next, and as to 60*s.* at the following Easter; but that he never paid them to John and has not yet paid them to the plaintiff and refuses to pay, to her damage laid at 100*s.* She produces a writing of the defendant which witnesses this.

The defendant prays that Denise may show something whence it may appear to the Court that she is the executrix of the said John. (*Note continued on the opposite page.*)

114A. MARTON *v.* GISBURN (PRIOR OF).[9]

Replegiari, ou il avowa sur le heir le doneour par graunt de seignourie et l'atournement le tenaunt en la taile et mist avaunt fait du graunt. Replegiari, ou les tenemenz furent donetz en fee tailee a tenir de chief seigneur, et le seigneur granta les services outre: le tenant en le taille attourna et devia sanz etc.: les tenemenz retournerent al heir le donour et l'avoweré fut fait sur lui: set defuit iudicium. Replegiari, en fee taillé la ou les tenemenz sount revenuz a les heirs le donour et la seignurye chaungé en le meen temps. Replegiari, ou le graunt des services fet a un Priour en fee, le tenaunt en fee taillé s'atourna et devia saunz heir: cely en la reversioun entra et voleit avoir estraungé l'estraunge purchazour de la seignourie.

Richard de Martone se pleynt qe le Priour de Geseborn[10] a tort prist ses[11] avers.

[1] et cest a la *B.* [2] *Om.* qe *P, L.* [3] s'il ne fust nome en le *B over erasure.* [4] dounqe le poeit le ordener bien fere *B over erasure*; bien covendra a les ordinaries *P.* [5] pur ceo responez *B, D, L.* [6] *Ins.* mye *L.* [7] *Ins.* par le testament *L.* [8] *Add.* et respondi etc. *D.* [9] *Vulg.* p. 46. Text from *A*: compared with *B, D, L.* The four headnotes from *A, B, L, Q*, respectively. [10] Sole burne *L*; Bisebourne *B.* [11] ces *A.*

this is the dead man's will, and we have nothing to do with anyone appointed by the ordinary unless the dead man died intestate—in which case the ordinary can [appoint an administrator]—you must answer.

Stanton, J., to the same effect. A quittance given by one who was not appointed executor would avail you nothing. Therefore etc.[1]

Note from the Record (*continued*).

The plaintiff produces a certain testament made under the name of the said John, which witnesses that John appointed Denise his executrix for the faithful execution of his said testament. And on the back of the said testament is written that the subdean of Hereford, before whom the testament was proved, committed the administration of the goods of the deceased to Denise and one John, son of the deceased.

The defendant says that, by virtue of this commission, John, the son, administered the goods of the deceased as executor; and that he made to the defendant a full acquittance of the debt by his letters, which the defendant produces and which witness this: and he prays judgment whether the plaintiff can exact the debt against the deed of her co-executor.

The plaintiff says that she ought not to be precluded from action by John's deed; for she says that John never administered any goods of the deceased by any commission (*per aliquam commissionem*) of the said subdean as the defendant says; and she prays that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded for three weeks from Easter.

114a. MARTON *v.* GISBURN (PRIOR OF).[2]

A tenant in fee simple (*B*) makes a gift in tail to *C* 'to hold of the chief lord,' but expressly reserves the reversion to himself. He (*B*) held immediately of *A* by certain services. Then *A*, being seised of the services by the hand of *C*, granted to a religious house the services of *C* and of all who should succeed *C* in the tenements. On this grant *C* attorned to the then Prior, and the present Prior has been seised of the services by *C's* hand. Now *C* has died without issue, and *D* has entered as *B's* heir and reversioner. Does *D* owe service to the Prior? Will the Prior's seisin of service by the hand of *C* enable him to avow a distress upon *D*? What is the effect of a gift in tail if the donor purports to make the tenant in tail hold, not of the donor, but of the donor's lord?

Richard of Marton complained that the Prior of Gisburn wrongfully took his beasts.

[1] But the record throws some doubt on the accuracy or completeness of this report. [2] Proper names from the record.

Herle avowa etc., et par la resoun q'une carué de terre et demy en A., B., et C. etc., dount le leue ou[1] la prise fust fait en est[2] parcel, fust en la seisine de un Nichol, qi les tient de W. de Moubra[3] par homage et faulté et par les services de viij. den. par an; des queux services W. fust seisi par my la meyn N. com par my la meyn soun verrai tenaunt; le quel N. hors de sa seisine dona mesme les tenementz a une Avice[4] et a les heirs de soun corps engendrez a tenir de chief seignour etc.; Avice se atorna de ces[5] services a W.; le quel W. dona et graunta les services A. et de ses[6] heirs et de ses[6] assignez et de touz ceaux qe les terres tenissent après[7] a Priour de Gisborne et a ses[6] successours a toux jours; par quel graunt Avice se atorna al predecessour mesme cesti Priour; et cesti Priour par my sa mayn seisi, et par ceste chartre. Et purceo qe Avice morust sauntz heir de soun corps, les tenementz retornerent a Richard com a cosyn Nichol le donour. Et pur la fealté Richard arrere, si avowmes[8] etc. sur Richard com sour[9] verrei tenaunt.

Pass. Vous avetz avowé sur Richard et par la resoun qe Avice tient de vous etc., et pernetz vostre title[10] de la seisine Avice vostre tenaunt; a quel Avice Richard, sur qi vous avez avowé, est tot estraunge. Jugement de la fourme de ceste avowrie.

Herle. Voletz ceo pur respounse?

Pass. C'est a la forme,[11] et si vous agardetz la forme bon nous dirroms asset.

Berr. C'est issint a la forme,[12] qe si nous agardissoms[13] ceste fourme malveys, jeo ne sai q'il[14] porreit dire plus, qe ceo est en anentissement[15] de sa avowrie en[16] tut.

Pass. A cest avowrie ne deit il estre r[espondu], et par la resoun qe la ou il dit qe Nichol dona les tenementz etc. a A. a tenir etc. et dit qu'il fust seisi de ces[17] services par my la meyn A. par le graunt W. de M., la quel A. tient les tenementz a ly et a ses[18] heirs de soun corps etc.,[19] jugement, si par la seisine des services par la meyn celuy[20] qi estat est esteint, purceo q'ele morust sauntz heir etc., sur Richard, qe a ly est tot estraunge, pusse ceste avowrie fair.

Hertep. ad idem. Nicholas dona etc. *ut supra* a Avice et a ses[21] heirs de soun corps engendrez; la quele Avice ne pout en sa seisine les tenementz charger,[22] purceo q'ele n'avoit qe terme de vie, *quia*

[1] en *A*; ou *B*. [2] cest *A*; est *B*. [3] Mounbray *B*. [4] Alice *B*; Agnes *L*, *and so throughout*. [5] ses *D*. [6] ces *A*. [7] *Om.* apres *L*. [8] avowoms *B*, *D*. [9] *Ins.* nostre *B*, *D*, *L*. [10] liez vostre estat *L*. [11] *Ins.* de ceste avowerie *L*. [12] *Om.* a la forme *B*, *D*. [13] agardoms *B*, *D*. [14] quei il *B*, *D*. [15] anientissement *B*. [16] *Ins.* le *L*. [17] des *B*. [18] ces *A*. [19] corps engendrez *B*, *D*, *L*. [20] cele *B*, *D*. [21] ces *A*; les *B*, *L*; ses *D*. [22] *Om. to after next* charger *B*, *D*.

Herle avowed etc. for the reason that a carucate and a half of land in A., B., and C. etc., whereof the place where the taking was made is parcel, were in the seisin of one Nicholas, who held them of William of Mowbray by homage and fealty and the service of eight pence a year, of which service William was seised by the hand of Nicholas as by the hand of his very tenant; and that Nicholas out of his seisin gave the same tenements to one Avice and to the heirs of her body begotten, to hold of the chief lord etc.; and that Avice attorned herself for these services to William; and that William gave and granted the services of Avice and of her heirs and of her assigns and of all those who should afterwards hold the lands to the Prior of Gisburn and to his successors for ever; and that on this grant Avice attorned herself to the predecessor of the present Prior; and that he was seised of [the services] by her hand and by this charter; and that, because Avice died without an heir of her body, the tenements returned to Richard [the plaintiff] as cousin of Nicholas the donor; and for the fealty of Richard, which is arrear, we avow etc. upon Richard as upon our very tenant.

Passeley. You have avowed upon Richard, and for the reason that Avice held of you etc.; and you take your title on the seisin of Avice your tenant; but Richard, upon whom you have avowed, is a total stranger to her. Judgment on the form of this avowry.

Herle. Is that to be your answer?

Passeley. It goes to the form; and, if you [the Justices] adjudge the form good, we shall have enough to say [about the substance.]

Bereford, J. The matter stands thus, namely,[1] that if we adjudged the form bad, I do not know how [the avowant] could say more; for [your answer] makes for a complete annihilation of his avowry.

Passeley. To this avowry he ought not to be received; for whereas he says that Nicholas gave the tenements etc. to Avice to hold etc., and says that he was seised of these services by the hand of Avice by virtue of the grant of William of Mowbray, and that the said Avice held the tenements to her and the heirs of her body etc., we pray judgment whether, by a seisin of the services by the hand of one whose estate is extinct because she died without an heir [of her body], he can make this avowry upon Richard, who is a total stranger to her.

Hartlepool to the same effect. Nicholas gave etc. (as above) to Avice and to her heirs of her body begotten, and Avice could not charge the tenements in her seisin; for, since she died without an heir of her

[1] Or 'It goes to the form, but only in this sense, namely.'

obiit sine etc. Et demaundoms jugement si par nul[1] atornement des services de celuy qi estat est esteint, qe ne poet les tenementz charger, depus qe les tenementz sount retournetz en la seisine Richard com heir le doneour par la resoun de soun primer dreit,[2] pusset sur Richard, q'est tot estraunge, destresce avower.

Scrop. Qaunt les tenementz furent en la seisine Nichol, si les teint il[3] com de chief seignour. N. par le feffement a Avice par li fet, si fist Avice la tenaunte[4] W.,[5] et[6] par[7] le graunt des services au Priour fait se estraungea[8] del tot de la seignurye; la quel se vesti[9] al Priour par l'attornement A., a ceo qu'il dit, qe aultrement ore demorreit Richard saunt seignour de ces[10] tenementz.

Hertep. Noun serreit,[11] qar jeo frei[12] bon avowrie pur W.[13] sur R.

Toud. Donqe la ou tenementz sount lessez a terme de vie ou doné[14] a un homme et a les heirs de soun corps engendrez a tenir du chief seygnour, le chief seignour[15] par vostre r[esoun][16] ne se[17] porreit estraunger ne ouster a la seignurie.

Hertep. Si William eust graunté[18] par fyn au Priour les services Avice, et ele vensist[19] en court par le *per que servicia* et ele moustrast[20] soun estat, ele ne attornereit jammès.

Herle.[21] Moult des choces sount hors de curt faites qe ne sount seoffrables en curt, *ut hic.*[22]

Hertep. Si Avice eust aliené les tenementz, Richard par soun fait ne serroit pas barré q'il ne recovereit par bref de fourme de doun. Nent plus ne poet ele charger les tenementz par soun attournement, qe sount del dreit Richard par la forme.[23]

Pass. Si le Priour portast[24] soun bref de costumes et des services vers Richard,[25] de qi seisine countereit il? Nent de la seisine Avice, qe Richard est[26] tot estraunge a ly.

Herle.[27] Nichol, qe les tenementz tient de William de Moubrai, fist Avice tenaunte[28] William par le feffement qu'il la fist a tenir du chief etc.; et William cele seignurie graunta au Priour. Et demaundoms jugement depus qe Nichol, qi heir vous estes, mist Avis en soun

[1] *Om.* nul *L.* [2] resoun del premer doun *L.* [3] *Ins.* de William *B, D, L.* [4] tenaunce *A.* [5] seigneur donqe par le feffement fet a Alice si fuist Alice le tenaunte William *B.* [6] *Om.* et *A.* [7] seignour et pus par le feffement qe Nichol fist a Agnes si fust Agnes le tenaunt William et William par *L.* [8] priour si fuist W. estrange *B.* [9] se fist *L.* [10] ses *B, D.* [11] freit *B, D.* [12] ferai *D.* [13] *Om.* pur W. *B, D.* [14] donez *B.* [15] *Om.* le . . . seignour *A, B, D, L.* [16] *Ins.* il *L.* [17] *Om.* se *L.* [18] *Om.* graunte *A*; *ins. B, Vulg.* [19] vousist *A*; vensist *B, D, L.* [20] moustra *A*; moustrast *B, D.* [21] Hert. *B, D.* [22] *Om.* ut hic *L.* [23] *Om.* par la forme *L.* [24] retorner' R. *A*; portast *B, D, L.* [25] *Om.* vers Richard *A*; *ins. B, D.* [26] seisine Agnes qele est *L.* [27] Hert. *B.* [28] tenaunce *A*; tenante *D.*

body, she had only [an estate] for the term of her life.[1] We demand judgment whether by virtue of an attornment made by one whose estate is extinct, and who could not charge the tenements since they have returned into the seisin of Richard the heir of the donor by virtue of his prior right, you can avow a distress upon Richard, who is a total stranger.

Scrope, J. When the tenements were in the seisin of Nicholas he held them of the chief lord [William de Mowbray]. Then Nicholas, by the feoffment which he made to Avice, made Avice the tenant [of the said William]. Then William, by the grant of the services to the Prior, wholly estranged himself from the seignory, and that seignory was vested in the Prior by Avice's attornment—so he says—for otherwise Richard would have remained without a lord for these tenements.

Hartlepool. That would not be so, for I could fashion a good avowry for William upon Richard.[2]

Toudeby. In that case if tenements are leased for term of life or given to a man and the heirs of his body begotten, to hold of the chief lord of the fee, then (according to your argument) that lord cannot estrange or oust himself from the seignory.

Hartlepool. If by fine William had granted the services of Avice to the Prior, and she had come into court upon the *per quae servicia* and had shown her estate, she would not have been [compelled to] attorn.[3]

Herle. Many things are done out of court that are not to be suffered in court. So here.

Hartlepool. If Avice had alienated the tenements, Richard would not be barred by her deed from recovering by writ of formedon. And no more can she by her attornment charge the tenements which by the form of the gift are of Richard's right.

Passeley. If the Prior brought his writ of customs and services against Richard, upon whose seisin would he count? Not upon Avice's, for Richard is a total stranger to her.

Herle. Nicholas, who held the tenements of William of Mowbray, made Avice a tenant of William by the feoffment that he [Nicholas] made to hold of the chief [lord of the fee]; and William granted this seignory to the Prior. And, since Nicholas, whose heir you are, put

[1] That is, as she died without an heir of her body, she must retrospectively be treated as a mere tenant for life.

[2] In other words, in spite of William's alienation of the seignory, Richard holds of William.

[3] In our second report (below, p. 28) this argument is more fully stated.

estat[1] a tenir de William, de qi il teint, et William le graunta[2] au Priour et a ses[3] successours des services A. et de ses heirs et de ses assignetz et de toutz ceaux qe les tenementz après tenissent, par quel[4] graunte William, qe fust chief seignour de cele seignurie, si[5] estraunga[6] pur toux jours,[7] si sur Richard, qe les tenementz tient après Avice com cosyn et heir Nichol, ne pussoms avower.

Berr. Asset avez[8] conu le fait[9] d'un part et d'aultre. Attendetz vos jugementz etc.

114B. MARTON *v.* GISBURN (PRIOR OF).[10]

Richard de Mertone porta son *replegiari* vers le Priour de Willingham etc.[11]

Herle. Nous avowoms la prise pur la reson qe un N. de Mertone fut seisi de ij. carués de terre, dont le lieu etc. est parcele, et les tynt de W.[12] de Moubray par certein services; le quel N. enfeffa un Alice a lui et a ses[13] heirs de son corps engendrez a tenir de chef seignur de fee;[14] par quel doun Alice fut seisi et se attourna[15] a W. de ces services, le quel W. dona et granta les services[16] A. et ses heirs et de ceux qe cele terre tenissent al Priour de W.[17] et a ses successours a touz jourz; par quel grant A. se attourna a Rogier predecessour mesme cesti Priour, et fut seisi par my etc.; et après la mort R. mesme cesti Priour seisi par my la mayn A. etc.;[18] et après la mort A., purceo q'ele devia sanz heir de sey, entra cesti R. com cosygne[19] et heir N. et seisi est de mesmes les tenemenz, et pur vij. deniers de ij. aunz arrere[20] si avowe sur Richard.[21]

Pass. Jugement de la forme de ceste avowerie, desicom il ad avowé de la seisine A., a qi Richard tut fut[22] estraunge, com eux mesmes ount dit en avowaunt.[23] Jugement, ou par ley de terre dut aver avowé sur les heirs A.[24]

Herle. Si nous feissoms avowerie general vostre reson lierast.[25]

[1] estes a Agnes fist son estat *L.* [2] graunt' *A*; Will. par le graunt *B, D*; Will. graunta la seignurye *L.* [3] ces *A, and so in other cases.* [4] le *A*; quel *B, D.* [5] par qel graunt cely qe fust chief se ad *L.* [6] sestraungea *B*; estraung' *L.* [7] *Ins.* jugement *L.* [8] avoit *A*; avetz *D*; avietz *B.* [9] *Om.* le fait *L.* [10] Text from *M*: compared with *R, P, Q*, and a short note in *X.* [11] Gisbourne *R*; S. *P*; Byllyngham *Q*; Walsingham *X.* [12] Will. *R, P.* [13] les *R.* [14] *Ins.* le qel W. graunta les services *Q.* [15] *Until next* atourna *supplied by later hand, M.* [16] granta la homage etc. *R.* [17] a un Robert nostre predecessor, *R.* [18] These statements are shortened in *R.* [19] cosyn *R, Q.* [20] pur la fealte cesti Ric. cosyn et heir N. arrere *R.* [21] *Add* com sur son verrai tenant etc. *R.* [22] est tot *R.* [23] *Om.* en avowaunt *R.* [24] *Om.* ou . . . A. *R.* [25] general vous deiset bien *R.*

Avice in his estate, to hold of William, of whom he held, and William granted to the Prior the services of Avice and of her heirs and of her assigns and of all those who should afterwards hold the tenements, and by this grant William, who was chief lord, estranged himself from this seignory for ever, we demand judgment whether we cannot avow upon Richard, who holds these tenements after Avice as cousin and heir of Nicholas.

Bereford, J. You have sufficiently admitted the facts on the one side and on the other. Await your judgment, etc.

114b. MARTON *v.* GISBURN (PRIOR OF).

Richard of Marton brought his replevin against the Prior of Gisburn etc.

Herle. We avow the taking for the reason that Nicholas of Marton was seised of two carucates of land, whereof the place [where the taking was made] is parcel, and held them of William of Mowbray by certain services; and Nicholas enfeoffed one Avice to her and the heirs of her body begotten, to hold of the chief lord of the fee;[1] and by this gift Avice was seised and attorned herself to William for her services; and William gave and granted the homage and services of Avice and of her heirs and of those who should hold that land to the Prior of Gisburn and to his successors for ever, and upon this grant Avice attorned herself to [Ralph], predecessor of the present Prior; and he was seised by the hand of Avice, and after [Ralph's] death the present Prior was seised by the hand of Avice etc.; and after the death of Avice, because she died without an heir of her body, this Richard entered as cousin and heir of Nicholas, and was seised of the tenements; and the Prior avows upon Richard for seven pence arrear for two years.[2]

Passeley. Judgment on the form of this avowry, for he has avowed on a seisin [by the hand] of Avice, and to her Richard was a total stranger, as they themselves have shown in their avowry. Judgment etc., for in this case by the law of the land [the Prior] should make his avowry upon the heirs of Avice.

Herle. If we were making a general avowry your reason would

[1] The donor attempted to make the tenant in tail hold of the chief lord and yet expressly reserved a reversion. [2] Another version says for fealty.

Mès nostre avowerie lie sur le[1] fet[2] par my le grant.[3] D'aultre-part, come chose est qe N. tynt de W. et qe N. enfeffa A.[4] solonc la forme,[5] et qe A. se attourna a W. et qe W. granta, par reson de quel grant A. se attorna a nostre predecessor et a nous, solonc ces pointz qe nous dounent estat avoms avowé.[6] Jugement, si nostre avowerie ne seit assez bon etc.

Pass. Tut eust A.[7] aliené en fee contre forme de Statut,[8] jeo deusse en ceo cas[9] avower sur les heirs A. tauntqe le tenant fut attourné[10] a moy. Et vous avowez a[11] la comune ley par la seisine A. et ne liez mye outre[12] par my le sang A. Jugement de la forme.

Herle. Vous deissez bien si nous feissoms nostre avowerie a la comune ley; mès ore le avowerie se lye sur un especial fet et ne mye en[13] comune forme. (Et mist avant la chartre W. de Moubray qe voleit: 'Sachez moy avoir granté a R. P. etc. le homage et les services issauntz de ij. carués de terre, le quel[14] A. tynt de W., et de ses heirs et de ses assignez et de ceux tenanz qe tenent ceux tenemenz.'[15]) [16]

Herle.[17] Nous avoms avowé de la seisine A., en qi estat sont deux choses ag[ardaunz]:[18] un estat[19] al heir A. si ele eust[20] heir[21] de son corps engenderé, autre estat a lui a qui la reversion append, et si ele devie sanz heir de son etc.[22] Mès si A. eust un[23] heir,[24] nous eussoms fet bone avowerie sur lui. Dont depus q'ele est devié[25] sanz heir de son corps[26] et Richard est entré en la[27] reversioun com heir N.,[28] jugement si nostre avowerie ne seit etc.[29]

Pass.[30] ut prius.

Herle. Ceo n'est pas a la forme, einz est al accion. Dont si jugement se face sur cele[31] point nous n'avendroms jammès a les services.[32]

Staunt.[33] Vous me grantez tenemenz a terme de ma vie a tenir de chef etc.[34] et q'après mon decès le tenemenz remeignent a un autre; et le seignur seisi par my la[35] mayn; et après mon decès l'autre entre;[36] le seignur fra bone avowerie de ma seisine;[37] et si est

[1] un *R.* [2] nostre avowerie sur le fet se lye *P.* [3] *Om.* par my le grant *R.* [4] *Om.* A. *M*; *ins. R, P, Q.* [5] *Ins.* A. *M.* [6] *Om.* predecessour . . . avowe *R.* [7] il *M*; A. *R, P, Q.* [8] *Om.* contre . . . statut *R.* [9] *Om.* en . . . cas *M, P, Q.* [10] se attournast *R.* [11] et vous avez fet iscy vostre avowerie sur *P.* [12] entree *Q.* [13] sur *Q.* [14] les queux *Q.* [15] et ceux qe ceux tenementz tyndrent *P*; *sim. Q.* [16] *Om.* this speech and the statement of the deed, *R.* [17] Malm. *R*; Dautrepart *P, Q.* [18] en qi deux estaz sount agardaunz *P*; choses a regarder *Q.* [19] est *P*; *om.* estat *R, Q.* [20] ust eu *R.* [21] *Om. to* eussoms *Q.* [22] *Om.* et si . . . etc. *P.* [23] eu *P.* [24] *Om.* engendere . . . heir *R.* [25] qele devia *R*; qe ele est morte *P, Q.* [26] *Om.* de . . . corps *R, Q*; de soy *P.* [27] sa *R.* [28] reverciou et est en leu de A. et de son heir *R*; et Richard est eynz com heir *Q.* [29] seit asset bone *R, P, Q.* [30] *Ins.* jugement de la forme *P, Q.* [31] ceu *R.* [32] jammes par autre avowerie *R*; a nos services *Q.* [33] Hervi *R.* [34] chef seignurage de fee *R.* [35] ma *R, P, Q.* [36] *Om.* et . . . entre *R.* [37] *Ins.* demeigne *Q.*

hold good, but here our avowry proceeds on the deed. And since the facts are that Nicholas held of William, and that Nicholas enfeoffed Avice in form aforesaid, and that Avice attorned to William, and that William granted, and that on the grant Avice attorned to our predecessor and to us, we have avowed upon these facts, which are those that give us our estate. Judgment, whether our avowry be not good enough.

Passeley. Even if Avice had alienated in fee against the form of the Statute,[1] [your] avowry should be upon the heirs of Avice until the tenant [her feoffee] attorned to you. And you are avowing under the common law upon a seisin [by the hand of Avice] and do not show how your avowry can be good outside the blood of Avice. Judgment as to the form.

Herle. What you say might be true if we were avowing by common law, but here our avowry proceeds on a special deed and is not in common form. (And he put forward the charter of William of Mowbray which said: 'Know that I have granted to [Ralph], Prior etc., the homage and services issuing from two carucates of land, which Avice holds of [me], and of her heirs and of her assigns and of all those who shall hold those tenements.') [2]

Herle. We have avowed upon a seisin [by the hand] of Avice, and in her estate two points are to be considered.[3] First, there is an estate for the heir of Avice, if she have an heir of her body begotten, and then there is another estate for him to whom the reversion belongs in case she die without an heir of her body. But if Avice had had an heir [of her body], we could have made a good avowry upon him; and so, since she is dead without [such an] heir, and Richard has entered in the reversion as heir of Nicholas, and is in the place of Avice and of her heir, we demand judgment, whether our avowry be not good enough.

Passeley, as before, asked for judgment on the form [of the avowry].

Herle. Your plea is not to the form of the avowry, but to the action. If judgment were given [against us] upon this point, we should never get to our services by any other avowry.

Stanton, J. You grant me tenements for the term of my life to hold of the chief lord of the fee, and after my decease the tenements are to remain to another; and the lord is seised [of the services] by [my] hand; and after my death [the remainderman] enters: the lord shall make a good avowry upon the seisin by my hand; for,

[1] Stat. Westm. II. (13 Edw. I.) c. 1 de donis. [2] See Guisbro' Cartulary (Surtees Soc.) ii. 27. [3] The text at this point is doubtful.

l'autre estrange de sang,[1] mès il est privé a la tenanz,[2] et[3] la seignurye demurt coment qe les tenemenz devignent a divers mayns.[4]

Ber. La ou vous mettez cest excepcion a la forme, tut est al action a destruire l'estat le Priour a touz jours en ceo cas.

Pass. Nous dirroms assez si vous argardez la forme bon.

Ber. Veez quel jugement se freyt si l'avowerie fut agardé[5] bon. Pur ceo veez[6] si vous voillez la demorrer.[7]

Pass. La ou il veut avower et solonc[8] le fet William parmy[9] la[10] seisine A., a qi Richard est tut estrange, nous vous dioms qe A. ad heir en pleine vie. Jugement, si sur autre qe sur lui[11] pussent il avower.[12]

Herle. Il n'est pas heir de ceux tenemenz,[13] qe[14] de ceus tenemenz ne put il[15] avoir autre heir qe de son corps engendré etc.

Pass. Sire, nous enlargeoms[16] nostre response.[17] Depus qe eux pernent[18] lour title de[19] grant W. de Moubray, par quel graunt[20] A. se attourna, jugement[21] si par le graunt W., qe ne avoit rien qe les services, le demene,[22] qe fut[23] en autre mayn, pusse estre[24] chargé.

Herle. Voilletz ceo pur response ?

Hunt. Depus qe N. nostre cosigne fut seisi de les tenemenz et les tynt de W. de Moubray, qi tenant il fut, et nous sumes entré en ceux tenemenz com heir[25] et en l'estat N., jugement, si nul[26] charge[27] qe W.[28] fesoit ou nul attournement fet par A., qe n'avoit q'a[29] terme de vie, pusse noz tenemenz charger et[30] en autre seignurie tourner.

Herle. A tiel[31] temps qe[32] Alice[33] attourna il n'avoit autre[34] qe[35] poit[36] attourner,[37] qar il n'y avoit tenant, et par vertue de quele grant fet par W. Alice se attourna au Priour predecessour cesti P. q'ore est.[38] Jugement, si de ceste seignurye des services nous pussent il estranger.[39]

Scrop. Lour response amounte qe s'il ne seit receu a cest avowerie la seignury est perdue.[40]

[1] et si suy jeo tut estrange a ly en le remeyndre *R.* [2] tenaunce *R*, *P*, *Q*. [3] *Ins.* a *R*. [4] seignurie est une *R*; coment qe la tenaunce devygne en estraunge meyn *P*. [5] si la forme soit agarde *P*. [6] avisez vous *P*. [7] *Om.* the last three speeches, *R*; *om.* last speech and attribute the next to Ber., *Q*. [8] il ount avowe sur *R*, *P*; *sim. Q*. [9] de *R*. [10] sa *R*. [11] *Om.* qe sur lui *R*. [12] pussent avowerie fere *R*; *sim. Q*. [13] il ne put de cez tenemenz estre heir *P*. [14] qar *R*, *P*, *Q*. [15] ele *R*, *P*. [16] enlargeroms *R*; enlargiroms *P*, *Q*. [17] dit *P*. [18] qil ount pris *R*. [19] del *R*, *P*, *Q*. [20] *Om. to after next* graunt *Q*. [21] grant W. qe granta les services A. son priour *R*. [22] tenaunce *R*. [23] qest *P*; qe est *Q*. [24] *Om.* estre *M*. [25] *Om.* com heir *Q*. [26] nule *R*. [27] estat *P*, *Q*. [28] A. *R*. [29] qe *R*, *Q*; qe a *P*. [30] ou *R*, *P*, *Q*. [31] ceu *R*. [32] qaunt *R*; ceo *Q*. [33] *Ins.* se *R*, *Q*. [34] autre ny avoit *R*. [35] *Ins.* sei *R*. [36] pout *R*. [37] avoir attourne *R*. [38] *Om.* qar . . . est *R*. [39] *Ins.* de pus q'ele sey attourne par my la grant W. qe pouer avoit de granter *R*. [40] *Om.* this speech, *R*.

even if the [remainderman] is a stranger in blood, he is privy to the tenancy, and the seignory subsists though the tenancy passes into a stranger's hands.

Bereford, J. Whereas you make this objection to the form [of the avowry], really it goes to the action and to the final destruction of the Prior's estate.

Passeley. If you adjudge the form good, we shall have enough to say [about the substance].

Bereford, J. Consider what our judgment would be if we awarded that the avowry was good. Consider whether you will demur at this point.

Passeley. Whereas he avows by means of William's deed and the seisin [by the hand] of Avice, to whom Richard is a total stranger, we tell you that Avice has an heir living. Judgment, whether you can avow upon any but him.

Herle. But [that heir] cannot be heir to these tenements, for of these tenements [Avice] can have no other heir than an heir of her body begotten.

Passeley. Sir, we will enlarge our answer. Since they take their title in the grant by William of Mowbray, and on that grant Avice attorned herself, we demand judgment whether by the grant made by William, who had nothing beyond the services, you can charge the demesne, which was in other hands.

Herle. Is that to be your answer?

Huntingdon. Since our cousin Nicholas was seised of the tenements and held them of William of Mowbray, whose tenant he was, and we have entered into them as heir and in the estate of Nicholas, we pray judgment whether any charge made by William or any attornment made by Avice, who was only tenant for life,[1] can charge our tenements or turn [us] over to another lord.

Herle. At the time when Avice attorned there was no one else who could attorn, for there was no other tenant; and, by virtue of the grant made by William, Alice attorned herself to the predecessor of the present Prior. Judgment, whether he can estrange us from the seignory of these services, since Avice attorned upon the grant of William, who had power to make the grant.

Scrope, J. [The avowant's] reply comes to this, that, if he be not received to this avowry, the seignory is lost.

[1] She was tenant in fee tail, but as she left no heir of her body, her estate came to an end at her death.

{*Herle.*[1] A cel temps qaunt Agnes s'atourna ele avoit tel estat qe ele poeit atourner, qar ele avoit fee taillé. Et par le fet W., A. s'atourna al Priour predecessour etc. Jugement, si eus de ceste seignurie nous pussent estraunger.

Scrop. Mès lour respouns amount qe si vous soiez osté de ceste avowerie, vous n'avendrez jammès a les serviz.}

Toud. Depus qe A. fut le tenant W. de dreit, et[2] il n'y avoit autre tenant al hure,[3] si il nous put estranger de ceste avowrie il horsgettereit[4] le seignur qe il ne put de sa seignurye s'eyder,[5] qe serroit encontre comune ley.[6]

Fris. Depus qe Richard entra com en sa[7] revercion après la mort A., il ne put sanz seignur estre. Mès le tenant W. ne put il estre, qar il se demist[8] tut de nette.[9] Par qei il covent a force q'il soit le tenant le Prior, ou autrement ensuerreit q'il serroit sanz seignur, qe serroit encontre ley.[10]

Ber. Le purchaz qe lui ad counté[11] qaunt N. enfeffa A., a tenir de chief seignur, qe n'est pas naturel chose qaunt tenant[12] a terme de vie ou en fee taillé ou en francmariage tendra de chief seignur.[13]

Hert.[14] Si A. eust aliené les tenemenz, Richard eust recoveré[15] après la mort A. par la forme[16] qe[17] serroit en l'estat eins ceo qe N. dona.[18] Et desicome il est ore seisi et de mesme l'estat, jugement si nul estat[19] ou nul charge qe A. fit, qi estat avom,[20] pusse les tenemenz Richard, q'est en l'estat N. son cosigne, par nul seisine des services par cele qui estat est defet pusse nostre franctenement charger.[21] D'autrepart, auxi naturelment com les tenemenz passerent hors de la seisine N., auxi naturelment devient revertir[22] en mesme l'estat.[23] Mès en la seisine N. ne furent pas les tenemenz N. regardantz au[24] Priour. Par qei par nul fet ou nul attournement[25] de celui qi estat est nule[26] devient[27] estre regardantz.[28]

[1] From *P*, instead of the last two paragraphs. Both pieces stand in *Q*, but with some confusion. [2] *Om.* et *Q*. [3] *Ins.* dont *Q*. [4] oustereit *Q*. [5] il ensiwereyt qe le seygnour ne se purroit demettre de sa seignurie *P*; qil ne poeit demettre de sa seignurie *Q*. [6] Toud. De pus A. tynt de W. le quel W. nous granta etc. s'il nous ostat de cel avowerie il limitereit le seignour q'il ne poeit de sa seignourie ostir *R*. [7] la *R*; entra en ceux tenemenz com en sa *Q*. [8] se ad demiz *R*. [9] *Om.* tut de nette *R*; net *P*; net' *Q*. [10] *Ins.* Par qey etc. *R*. [11] Ber. Le peche q'il avoit comense en le primer feffement *R*; le purchaz qil ad counte *P*, *Q*. [12] counte amount qe *Q*. [13] de chef seignourage de fee uncore demurt, qar tenant en fee et taille naturelment dut tenir de doneour *R*. [14] Hertepol *R*. [15] *Om.* recovere *R*. [16] *Ins.* de doun *R*. [17] et donque *R*; mort A. et *Q*. [18] lestat qe N. fut avaunt le feffement fet a A. *R*. [19] si nully fet *R*. [20] qi estat est anenti *P*; *sim. Q*. [21] qi estat est anenti si la tenaunce R. qest en lestat N. pusse charger *R*. [22] retourner *R*, *P*, *Q*. [23] *Om.* en . . . lestat *R*. [24] N. tenuz du *R*. [25] par latournement *R*. [26] est defet de net *P*; est defait ne *Q*. [27] deivent a ly *Q*. [28] estat defete ne deit la seignourie changer *R*.

{*Herle.*[1] At the time when Avice attorned she had such an estate that she could attorn, for she had a fee tail. And by the grant of William she attorned to the Prior's predecessor. Judgment, whether they can estrange us from the seignory.

Scrope, J. [Your] reply amounts to this, that, if you are ousted from this avowry, you will never come by the services.}

Toudeby. Since Avice was by law William's tenant, and there was at the time of the grant no other tenant, if then [the plaintiff] could estrange us from this avowry, he would prevent a lord from alienating his seignory ; and that would be against common law.

Friskeney. Since after Avice's death Richard entered as in his reversion, he cannot be without a lord. But he cannot be tenant of William, for William has quite clearly demitted himself altogether from the seignory. Therefore he must of necessity be the tenant of the Prior. Otherwise he would have no lord, and that would be against law.

Bereford, J. The sin that was committed in the first feoffment when Nicholas enfeoffed Avice to hold of the chief lord still remains,[2] for it is not a natural thing that tenant for life or in tail or in frank-marriage should hold of the chief lord ; naturally he should hold of the donor.[3]

Hartlepool. If Avice had alienated the tenements, then after her death Richard would have recovered by the form [of the gift] and would have been in the estate in which Nicholas was before the gift. And since Richard now is seised and of the same estate, [we pray] judgment whether any estate or any charge made by Avice, whose estate is defeated, can charge the tenements of Richard (who is in the estate of Nicholas his cousin) by a seisin of services given by the hand of her whose estate is defeated. Moreover, the tenements which passed out of the seisin of Nicholas ought to revert in the same state and the same natural condition. But when they were in the seisin of Nicholas they were not regardant to the Prior. Therefore they ought not to be made regardant by any act or any attornment of one whose estate is null.

[1] An alternative for the last two speeches.

[2] See the version in our note. The version in our text seems to be corrupt. The 'sin' was the donor's attempt to make the tenant in tail hold of the chief lord of the fee.

[3] Combining the two versions given on the opposite page.

Herle. Vous ne estes mye en l'estat N.[1] eiaunt regard al tenance[2] des services, qar N. demist a A. a tenir de chief etc.,[3] scil. de W., le quel W. granta les services outre[4] au Priour, et A. se attourna ; issint qe W. est estrangé de ses services.[5]

Scrop. La ou il y ad grant des services en le dreit, la covent il attourner[6] en le dreit.[7] Mès ele n'avoit qe a terme de vie ; par qei le attournement est desacordaunt au grant.[8]

Herle. L'attournement est assez cordaunt[9] al grant, qar en l'estat A. il y avoit[10] posibilité du fee.

Pass. Jeo pose qe le Priour eust porté son bref de custumes[11] et countast de la seisine A., il lui convendreit fere Richard privé a A., ou altrement il ne prendra rien. Auxi par de cea.[12]

Herle. Nous ne sumes mye en la cas, qar il ne suyt mye il ne recoverera mye[13] par bref de custumes et de services *ergo* il ne recovera mie par avowerie ;[14] qar meynt homme recovera[15] par avowerie qe ne recovera mie[16] par bref de custumes et de services qaunt le dreit des services passe[17] par my un grant.[18]

Hert. Si W. de M. eust destreint Richard pur[19] services arrere et liast s'avowerie[20] par my la mayn N. cosigne etc., qi heir il est, depus q'il ne put dedire la seisine N. et ad son estat, il ne[21] barreit mye[22] l'avowerie.

Herle. Il freit bone avowerie si Richard le vousit[23] soeffrir. Mès il put bien dire[24] qe de la seisine N. ne put il avower, qar il se demist de nette et issint estrange etc.[25]

Hert.[26] Après ceo qe W. eust granté les services A. au Priour, si le Priour eust porté son bref de covenant vers W. a conustre les services A. a lui,[27] et la femme eust venue[28] en court et[29] dit q'ele n'avoit qe[30] fee taillé, jeo crey qe[31] la court ne soeffreit[32] mye de attourner,[33] pur ceo qe ceo serreit encontre ley. Issint demurreit W. come avaunt.[34] Auxi par de cea.

[1] *Ins.* et *R.* [2] dreit *R.* [3] *Ins.* seignour de fee *R.* [4] *Om.* outre *R.* [5] *Om.* issint . . . services *R.* [6] covent avoir attournement *R*; covent la qil y eit atournement *P.* [7] *Om.* en . . . dreit *Q.* [8] al dreit graunte *P.* [9] acordant *R, P, Q.* [10] il n'y avoit *R* ; si fut *P.* [11] *Ins.* et de services *R, P* ; *sim. Q.* [12] rien par son bref : ita hic. *R.* [13] cas qil neusent mye il ne put recoverir *R* ; et il ne suyst pas il ne recovera *Q.* [14] ergo il ne put avenir par voie davowerie *R.* [15] put recoveryr *P.* [16] prendreyt rienz *P.* [17] parasse (?) *M.* [18] *Ins.* qar qaunt services passent par my grant home avendra bien a les services par voie davowerie et non par bref de costumes et de services *R.* [19] *Ins.* aultr' *Q.* [20] et ust lye la seisine *R* ; et liast la seisine *P, Q.* [21] *Ins.* ly *R, P, Q.* [22] *Ins.* de *R, P, Q.* [23] ly voleit *R.* [24] mes si Richard vousist dire *Q.* [25] mes il ly put oster qe de la seisine N. ne put il avower, qe pus cele seisine il se demist, et issi le put il estranger *R.* [26] Scrop. *P.* [27] bref de quid iuris clamat vers la femme *Q.* [28] fut amene *P, Q.* [29] *Ins.* ust *R.* [30] qele fut tenant en *R.* [31] *Om.* jeo . . . qe *R.* [32] chacereyt *R, P* ; *sim. Q.* [33] End of speech, *R.* [34] Par quei W. demoreit auxi cum avaunt *P* ; *sim. Q, but* demoert.

Herle. You are not in the estate of Nicholas as regards the services, for Nicholas demised to Avice to hold of the chief lord, to wit, of William; and William granted the services over to the Prior; and Avice attorned herself; so William is estranged from his services.

Scrope, J. When there is a grant of services in the right, then there should be an attornment in the right;[1] but here she had only a life estate; so the attornment does not accord with the right that was granted.

Herle. The attornment accords well enough with the grant, for in Avice's estate there was the possibility of a fee.[2]

Passeley. I put case that the Prior had brought a writ of customs and services and had counted on Avice's seisin, he would have had to make Richard privy to Avice or he would have taken nothing. So in this case.

Herle. We are not in the case [that you put], for it does not follow that because he cannot recover by writ of customs and services therefore he cannot recover by avowry; for many a man shall recover by avowry who shall not recover by writ of customs and services when the right of the services passes by means of a grant.

Hartlepool. If William of Mowbray had distrained Richard for services arrear, and made his avowry binding by an [alleged seisin] by the hand of Nicholas [Richard's] cousin, whose heir Richard is, then Richard (not being able to deny the seisin [at the hands] of Nicholas, and not being able to deny that he [Richard] has the estate of Nicholas) could not bar [William] from his avowry.

Herle. Yes. [William] could make a good avowry if Richard would suffer it; but [Richard] could say that [William] could not avow upon a seisin by the hand of Nicholas, for [William] demitted himself, and so is a stranger.

Hartlepool. After William had granted Avice's services to the Prior, if the Prior had brought his writ of covenant against William to obtain a conusance [by fine] of Avice's services to him, and if she had come into court upon a *quid iuris clamat* and said that she had only fee tail, I do not believe that the Court would have suffered her to attorn;[3] for that would be contrary to law. And thus William would remain as before. So in this case.

[1] In this context 'the right' implies fee and perhaps fee simple.

[2] The tenancy in tail seems at times to be regarded as being in substance an estate for life which will become a fee if the tenant leaves issue.

[3] Or 'have driven her to attorn.'

Herle. Il n'est pas semblable, qar il y sount[1] mult[2] des choses[3] fet hors de court qe demorrent establé[4] touz jours nepurqaunt eux ne serroint receivables ceinz.[5]

{*Scrop.*[6] Grant de seignorie en le dreit bosoigne de attorn[ement] de tenant de dreit.

Herle. Ele fu tenant de dreit tant com possibleté d'issu fut.

Scrop. Si W. voleit avouer sur nous, nous ne li porrioms oster.

Herle negavit.

Scrop. Vous ne porriez pas user vers nous bref de costumes et services de la seisine A.; *ergo* etc.

Herle. Non sequitur.

Scrop. Si W. ust granté les services en courte, lai ne chacereit pas A. de attorner etc.

Herle. Hoc non probat.}

Note from the Record.

De Banco Roll, Trinity, 2 Edw. II. (No. 178), r. 251 d, York.

Richard of Marton brings replevin against the Prior of Gisburn and two others. The declaration alleges the taking of two heifers in the vill of Marton at a place called Sandhulle on [Jan. 29, 1305] the Friday next before the Purification of B. Mary in 33 Edw. I., and damages are laid at forty shillings.

The Prior answers for himself and the others, and avows the taking. For he says that Nicholas of Marton held of William de Mowbray a carucate and a half of land in the vill of Marton and Tollesby,[7] whereof the *locus in quo* is parcel, by homage and fealty and the service of eight pence a year; and that Nicholas gave these tenements to Avice of Laysingby to hold to her and the heirs of her body lawfully begotten, of the chief lords of the fee, by the services thence due and accustomed, and if Avice died without an heir of her body lawfully begotten, the tenements should revert to the donor or his heirs; and that Avice attorned herself to William de Mowbray the chief lord for her service; and that afterwards William gave and granted and by his charter confirmed to God and the church of B. Mary of Gisburn and the canons serving God there, in free, pure, and perpetual alms, the homage and service of Avice and her heirs for the said tenements and of all, whoever they might be, who after her death should by any right succeed in the tenements; (profert is made of the charter which witnesses this gift;) and that thereupon Avice attorned for her fealty and service to Ralph, a predecessor of the present Prior; and that the present Prior likewise was seised

[1] *Om.* Il . . . sount *R.* [2] meynt *R*; meynte *Q.* [3] *Ins.* sount *R.* [4] demourent en lour force *P*; *om.* estable *Q.* [5] qe en court ne serreynt pas suffertes etc. *R*; les queux ne serroient pas en court recevables *P*; mes en court ne serrent mie resceyvable *Q.* [6] The following occurs in *X.* [7] Tolesby, a hamlet of Marton near Ormesby.

Herle. Not a similar case, for there are many things done out of court which remain perfectly valid, notwithstanding that they could not be done in court.

{*Scrope.*[1] A grant of the seignory in the right requires an attornment by one who was tenant in the right.

Herle. She was tenant in the right so long as there was possibility of issue.

Scrope. If William wished to avow upon us, we could not prevent him.

Herle. That is not true.

Scrope. You cannot use against us the writ of customs and services, and therefore [you cannot avow upon us].

Herle. That is a *non sequitur*.

Scrope. If William had made the grant [of Avice's services] in court, the law would not have compelled Avice to attorn].

Herle. That does not prove your point.}

Note from the Record (*continued*).

of her fealty and service; and that she died without an heir of her body lawfully begotten; and that the tenements reverted to the plaintiff as cousin and heir of Nicholas the donor; and that because the plaintiff's fealty was arrear, the Prior avows the taking of one heifer; and that because the service of eight pence was arrear for eight years he avows the taking of the other heifer.

The plaintiff confesses that Nicholas held of William in chief by the said services and gave the tenements to Avice in form aforesaid; and that William granted her services to the avowant's predecessor; and that Avice attorned herself. But he says that the avowant cannot therefore avow the taking. And he demands judgment because the Prior takes the title of his avowry from his seisin by the hands of Avice, who had nothing in the tenements except only for term of her life, since she died without an heir of her body (as the avowant has confessed in his avowry); and because by a seisin of the service by her hands in manner aforesaid no title of right could after her death devolve through any grant made by William to the avowant, especially as the tenements have already come into the seisin of the plaintiff as cousin and heir of Nicholas according to the condition[2] expressed in Nicholas's gift; and because it thence follows that the said services of the tenements, thus being in the plaintiff's seisin by the death of Avice, ought rather to be extinguished so far as the avowant is concerned than to remain to the avowant by William's gift. (*Note continued on next page.*)

[1] From a condensed report of the debate. The 'Scrope' of this version seems to be, not a judge, but an advocate. Perhaps the reference is to Geoffrey, the judge's younger brother; but a mistake may be suspected.

[2] That is, the reservation of the reversion.

Note from the Record *(continued)*.

The avowant also demands judgment because the plaintiff confesses that William, of whom Nicholas held the tenements in chief, and who was seised of the services by Avice's hands, granted by his charter to the avowant's predecessor the service of Avice and of her heirs and of all those, whosoever they might be, who after her death should by any right succeed to the said tenements; and because the avowant's predecessor could not acquire his

115. GIFFARD *v.* HAGHEMAN.[1]

Quare impedit, ou il claime le presentement pur la tierce voydaunce. Le demaundaunt dit q'il ne fust unqes persone ne enpersoné etc. Ou il fust receu a dire q'il fust longe temps seisi avaunt le jour de la conissaunce soun feffour qy estat il avoyt; ou fust chacé d'averrer sa seisine devaunt le bref purchacé, qe fust garaunt a la conissaunce.

Quare impedit vers feme qe clama par reson de terce ou la presentacion la persone fust traversé; et non potuit pur ceo qe le feffour cely qe porta le bref l'avoit conu en court; ou il traverseront q'il fu seisi de la terre et de l'avoweson jour de bref sur quel la conissance se fit; et alii econtra.

Johan Giffard porta soun *quare impedit* et dit qe Johan Hauman[2] et Alice sa femme a tort ne le suffrerent[3] presenter etc. al eglise de C. etc.; et dit q'a li appent etc. par la resoun qe un Johan Trenchard[4] fust seisi du manier de C., a qi l'avouesoun etc., en temps de pees, en temps le Roy Henri ael etc., et[5] presenta un Johan soun clerk etc., qe a soun presentement etc.; après qi mort, par le nounage Henri fitz et heir J., devent[6] le manier a qi etc. en la mayn nostre seignour le Roi E.,[7] piere le Roy q'ore est; qe a mesme cele eglise presenta, com del dreit le heir,[8] un soun clerk Roggier de Drokneforde etc., qe a soun presentment etc. en temps mesme le Roi;[9] le quel H., com il fust de pleyn age, dona a J. de G.[10] vij. acres[11] de terre en C. ensemblement etc.;[12] par qi mort la eglise est ore voidez,[13] et Johan seisi de la terre, et issi appent a li a presenter;[14] dount etc.

[1] *Vulg.* p. 47. Text from *A*: compared with *B*, *D*, *L*. Second headnote from *D*. [2] Hamond *L*. [3] soeffrent *B*. [4] Trenchaunt *L*. [5] *Om.* et *B*, *L*. [6] devynt *L*. [7] Et *A*; Edward *L*. [8] del droit Henri *B*; *sim.* *D*; par le nonage Henri le fitz Johan *L*. [9] par quey mort la eglise est ore voyde *L*. [10] Giffard *B*, *D*; enfeoffa Joh. de Gifford *L*. [11] de un acre *L*. [12] ove lavoweson de la eglise de C. avauntdite *L*. [13] voide *B*, *D*; *om.* par . . . voidez *L*. [14] *Ins.* et il ly disturbe *L*.

Note from the Record (*continued*).

seisin thereof [*i.e.* of the service] in any other wise than by the hands of Avice the then tenant; and because she, as became her, attorned herself for fealty and service to the avowant's predecessor; and because the avowant also was seised of those services by her hands.

A day is given them to hear their judgment here three weeks after Michaelmas.[1]

115. GIFFARD *v.* HAGHEMAN.[2]

In a *quare impedit* the impedient pleads that this is the third voidance since her husband's death, and that as doweress she should present. The plaintiff, who claims under a feoffment made by the husband's heir, replies that this is only the second voidance. It is a good rejoinder that the heir confessed the two voidances in an action brought against him by the doweress by a writ dated before the feoffment, even if the confession itself was posterior to the feoffment. A confession made in an action relates back to the date of the original writ whereby the action was begun.

John Giffard brought his *quare impedit*, and said that John Hagheman and Isabella his wife wrongfully did not suffer him to present etc. to the church of C. etc. And he said that the presentation belonged to him etc., for that one John Trenchard was seised of the manor of C., to which the advowson [was appurtenant], in time of peace, in the time of King Henry, grandfather of the now King, and presented one John his clerk etc., who at his presentment etc.; and that upon his [John Trenchard's] death the manor to which [the advowson was appurtenant] came into the hands of King Edward, father of the now King, by reason of the nonage of Henry, son and heir of John; and that the said King Edward, in right of Henry, presented one Roger of Drokensford his clerk etc., who upon his presentment [was instituted etc.] in the time of the said King; and that the said Henry, when he was of full age, gave to [John Giffard] seven acres of land in C., together with the advowson of the church; and that by the death of [Roger of Drokensford] the church now is void; and that John [Giffard] is seised of the land, and so the presentation belongs to him etc.

[1] From a deed dated May 1, 1329, we learn that, a contention having arisen, Thomas de Mowbray confirmed the gift of his great-grandfather William de Mowbray to the Prior, and released to the Prior any right that he (Thomas) might have in the homage and service of Walter, son of Richard of Marton. See Guisbro' Cartulary (Surtees Soc.) ii. 29.

[2] Proper names from the record.

Friss. Bien est verité qe J. fust seisi du manier a qi etc., et qu'il presenta etc., qe [1] après la mort J. le manier etc. devent en la seisine le Roi *ut supra*,[2] et le Roi nous assigna en dower la tierce partie del manier ove les apurtenaunces. Et la ou il dit qe nostre seignur le Roy presenta [3] etc., nous vous dioms q'il presenta un soun clerk J. de D. etc. par qi ressoignement [4] la eglise voyda, et pus [5] presenta Roggier de D. etc., par qi mort la eglise est ore voide. Et issint appent il a nous a presenter ore par resoun de nostre dower, purceo qe ceo est le tierce presentment.[6]

Herle. Qe J. de D. ne fust unqes persone ne [7] enpersoné en mesme la eglise, prest etc. Et [8] issint ne appent il mye a li a presenter par resoun de tierce etc.[9]

Toud. A ceo ne devetz avenir, qe a [10] utaves de Saint Hillari portames un *quare impedit* vers H. Trenchard,[11] qe [12] estat vous clamez; qe conust le ij. presentments com nous dioms. Et demaundoms jugement si encountre la conissaunce celuy, qi estat vous avetz, a nous fait en curt qe porte record, avaunt ceo qe vous par ley [13] rien eusset [14] en la terre, pussez estre receu d'averrer le contrarie [15] de cel conissaunce.

Herle. Et nous jugement, depus qe nous portames cesti bref et en countant moustrames nostre dreit, vous en vostre respounse grauntastes nostre dreit, mès deites q'il i avoynt ij. presentments ou nous deimes q'il n'y avoit qe un; a quel respounse nous en repliaunt tendimes d'averrer le contrarie de vostre respounse; ou vous pussez en vostre premer replicacioun [16] avoir dit ceo qe vous ore deites.[17] Et demaundoms jugement.

Berr. Vous moustrastes vostre dreit en countaunt, et ele en soun defens [18] moustra soun dreit. Vous repliastes [19] et dites [20] a soun respounse qe J. ne fust unqes persone enpersoné en cel eglise, q'est en anentaunt [21] soun dreit. Qaunt a ore [22] vous pledetz sur vostre dreit, et ele plede sur soun dreit pur [23] le tierce presentment [24] avoir a tot sa vie, en qi avowrie la eglise soit. Pur quei, n'est ele ore asset venu

[1] et *L.* [2] la mort Johan le roy seisi le manoir pur le nonage etc. *L.* [3] *Om. until after next* presenta *A*; *supplied from B, D.* [4] resignacioun *L*; resignement *B, D.* [5] et le roy par le nonage Johan autre foiz *L.* [6] la tierce voidaunce *B*; la terce voydaunce pus la mort Johan nostre baron *L.* [7] *Om.* ne *B.* [8] Que J. de Rokesford persone enpersone mesme ceste la eglise morust issi qe Rog. etc. et *L.* [9] de terres *L.* [10] as *B.* [11] Henri de M. *B*; Johan Hamond *L*; Henri Mauman *D.* [12] qi *B, D.* [13] par ly *L*; par lui *D.* [14] rienz y eussetz *B*; *sim. D.* [15] revers *L.* [16] response *B*; respons *D.* [17] *Om.* ou . . . deites *L.* [18] en responaunt *L.* [19] repliez *L.* [20] deistes *B.* [21] nentant *B*; aneynten' *L.* [22] *Ins.* et issi *L*; *om. B, D*; qaunt a ore *may belong to the previous sentence.* [23] par *A, B, D, L.* [24] *Ins.* a *B.*

Friskeney. Very true it is that John [Trenchard] was seised of the manor, to which etc., and that he presented etc.; and that after his death the manor etc. came into the King's seisin, as aforesaid; [but] the King assigned to us in dower a third part of the manor, with the appurtenances. And, whereas he says that our lord the King presented one Roger of Drokensford, we tell you that the King first presented one John of Drokensford his clerk etc., upon whose resignation the church was vacant, and afterwards presented Roger of Drokensford etc., upon whose death the church now is vacant, and therefore it belongs to us now to present by reason of our dower, for this is the third presentation.[1]

Herle. John of Drokensford never was parson imparsonee in the said church. Ready etc. So it does not belong to them to present by reason of the third [turn].

Toudeby. To that you cannet get; for on the octave of St. Hilary we brought a *quare impedit* against Henry Trenchard, whose estate you claim, who confessed the two presentations alleged by us. And we demand judgment whether (against the confession of him whose estate you have, made to us in a court which bears record, and made before you by law had anything[2] in the land) you can be received to aver the contrary of this confession.

Herle. And we also demand judgment, since we brought this writ and in our count showed our right, and since you in your answer granted our right, but said that there were two presentations where we said that there was only one, and since we in our reply tendered to aver the contrary of your answer, and since you might have said in your first answer what you say now.

Bereford, J. You [for the plaintiff] showed your right in your count, and she showed her right in her defence, and you replied to her answer and said that John [of Drokensford] was never parson imparsonee in this church, and this [reply of yours] makes for an annihilation of her right.[3] So now you are pleading upon your right, and she is pleading upon her right to have the third presentation for the whole of her life (no matter in whose avowry the church may be), and, this being so, has she not come in good time to take advantage

[1] Or 'the third voidance after the death of John our husband.'

[2] Or 'before you had anything from him.'

[3] Or perhaps 'makes for an annihilation of her right so far as concerns the present action.'

par temps[1] de sei eider par la conissaunce fete en court avaunt ceo qe vous rein usset?

Herle. Qe nous sumes[2] seisi de la terre[3] et del avowesoun avaunt[4] le jour de la conissaunce, prest etc.

Toud. Qe vous ne[5] fustes feffé avaunt la date du bref purchacé, sur quel bref la conissaunce fust fait, prest etc.

Scot. A ceo n'avoms mestier, qe vous nous donastes[6] cele issue sur le jour de la conissaunce, a quel issue en sa[7] forme nous sumes a travers. Et n'entendomps pas qe la curt a aultre issue nous[8] voille chacer.

Scrop. Le bref est garraunt a la conissaunce. Par quei a la date du bref sur quel la conissaunce est garr[auntie] si deit homme enquere.

Berr. Jeo porte moun *precipe quod reddat* vers vous de certeynz tenementz. Pendaunt moun bref, vous rendet[9] a un aultre ou alienet[10] les tenementz, ne serra la tenaunce en vostre persone averé, eaunt regard al jour del purchatz[11] et nent a la reconissaunce[12] etc.?

Scot. Nous pernoms al issue qe eux nous donerent. Jugement.

Hervi. Si, pendaunt le bref J. et Alice, Henri vosist[13] avoir graunté l'avowesoun a un aultre, *non valeret*[14] etc. Et d'altrepart, tot vosist il fair la conissaunce ceinz auxint com il fist[15] saunz bref, il[16] ne serroit pas receu. Par quei le bref est garraunt a la conissaunce.

Et par agarde disount[17] outre.

Scot.[18] Sire, qe nous fumes feffé de la terre et del avowesoun par Henri[19] avaunt vostre bref purchacé, prest etc.

Toud. Et qe vous rein avietz[20] en la terre *die impetracionis brevis* sur le quel la conissaunce etc., prest etc.

Note from the Record.

The record of this action, Giffard *v.* Hagheman, has not been found; but on De Banco Roll, Hil. 2 Edw. II. (No. 174), r. 34, stands the record of Hagheman *v.* Trenchard. John Hagheman and Isabella his wife bring a writ of *quare impedit* against Henry Trenchard concerning the church of

[1] ele venu assetz par temps *B*; *sim. L.* [2] fumes *B.* [3] de man' *B.* [4] *Om.* avaunt *L.* [5] *Om.* ne *L.* [6] diom *L.* [7] la *B.* [8] vous *L.* [9] responez *B*; respondetz *D*; rendez *L.* [10] alienetz *B, D, L.* [11] du bref purchace *L.* [12] al altr' bl' *A*; a la renonis' [reconisance?] *B over erasure*; a la jour etc. *L.* [13] John et Alice voillent *L.* [14] valet *B.* [15] *Om.* auxint . . . fist *L.* [16] ele *B, D.* [17] disoient *B.* [18] Ston. *L.* [19] *Om.* par Henri *L.* [20] navietz *B*; navetz *D.*

of a confession made in court at a time when you as yet had nothing?

Herle. We were seised of the land and the advowson before the day of the confession. Ready etc.

Toudeby. You were not enfeoffed before the date of the purchase of the writ upon which the confession was made. Ready etc.

Scoter. We have nothing to do with that; for you gave us this issue as to the day on which the confession was made, and that issue we have formally traversed. We do not think that the Court will drive us to any other issue.

Scrope, J. The writ is the warrant for the confession. Therefore the inquiry should be as to [the state of affairs at] the date of the writ which was the warrant for the confession.

Bereford, J. I bring against you my *praecipe quod reddat* for certain tenements. Pending my writ, you render them to another or you alienate them. [In my action] cannot the tenancy be averred in your person, regard being had to the date of my writ and not to the alienation?

Scoter. We are taking an issue that they gave us. Judgment etc.

Stanton, J. If, pending the writ that John and Isabella brought, Henry had wished to grant the advowson to another, it would have been of no avail. Moreover, if [Henry] had desired to make here in court, but without a writ, the confession that he made, he would not have been received to do it, for the writ is warrant for the confession.

Afterwards [the plaintiff] pleaded over by award of the Court.

Scoter. We were enfeoffed of the land and the advowson by Henry before the purchase of your writ. Ready etc.

Toudeby. You had nothing in the land on the day of the purchase of the writ upon which the confession [was made]. Ready etc.

Note from the Record *(continued).*

Schaldeflete. They count that John Trenchard was seised of the manor to which the advowson pertains; and that in the time of Edward I. he presented one John de Insula; and that the manor with the advowson descended to Henry Trenchard as his son and heir; and that, on the death of John de Insula, Henry being under age and in ward to the King, the King as guardian presented John of Drokensford and afterwards on his resignation presented Roger of Drokensford, by whose death the church now is vacant. (*Note continued on the following page.*)

Note from the Record (*continued*).

The plaintiffs further allege that the King assigned to the plaintiff Isabella, sometime wife of John Trenchard, the third part of the manor with the appurtenances to hold by way of dower; and that on this third voidance it belongs to her to present to the church; and that Henry unjustly impedes her and her husband from presenting.

And Henry comes and cannot deny that the presentation to the said

116. ANON.[1]

Cui in vita, ou le tenaunt voucha un altre qe le heir le baroun et la paroule demurra, *et stetit vocatio.*

En bref d'entré: 'Precipe A. de B. etc. reddat etc. tantam etc. in quo non habet ingressum nisi post dimissionem quam Robertus[2] Cok quondam vir Isabelle de C. matris predicti E., cuius heres ipse est, inde fecit A. de R., cui ipsa in vita sua contradicere non potuit.'

Herle pro tenente voucha a garraunt un enfaunt denz age.

Pass. pro petente. Nous demaundoms seisine de terre; qe vous avez vouché un enfaunt denz age, et ceo bref nous est[3] doné par statut, qe voet 'quod secta mulieris aut eius heredis non deferatur etc. set expectet emptor etc.' Et nous demaundoms[4] com heir etc.[5] Jugement etc.

Herle. Nous sumes hors de[6] degreez, et ceo suppose vostre bref. Par quei nous ne fumes[7] mye[8] 'emptor'; par quei graunt duresse serroit si nous perdissoms nostre voucher.

Pass. Nous prioms benefitz de statut, qe parle pur nous generalment[9] etc.

Berr. regarda le statut et dit: Nous ne voloms ore terminer l'entendement de statut, ne nous ly toudroms[10] poynt[11] son voucher en ceo cas pur la duresce qe aultrement ensiwereit. Par quey estoyse le vowcher etc.

[1] *Vulg.* p. 48. Text from *A*: compared with *B*, *D*, *L*. [2] Rogerus *B*. [3] bref nest *D*; nest *corrected into* est *B*. [4] nous sumes cy addemaunder *L*. [5] heir nostre mere *L*. [6] des *B*. [7] sumes *L*. [8] qe *A*; pas *B*. [9] expressement *L*. [10] toudroms *D*; tenderoms (?) *A*. [11] statut mes nous ne lui voloms toller *B*.

Note from the Record (*continued*).

church belongs on the present occasion to the said Isabella by reason of her dower in the said manor.

Therefore it is awarded that John and Isabella recover their presentment to the said church, and have a writ to the bishop of Winchester bidding him admit their presentee notwithstanding the claim of the said Henry.

116. ANON.

In a writ of entry *sur cui in vita* in the *post* the tenant is allowed to vouch an infant.

A writ of entry ran thus:—'Command A. of B. etc. that he render [to E.] so much etc. into which he has no entry save after (*post*) the demise which Robert Coke, sometime husband of Isabel of C., mother of the said E., whose heir he is, made to A. of R., she [Isabel] being unable to contradict [her said husband] in his lifetime.'

Herle, for the tenant, vouched to warrant an infant within age.

Passeley, for the demandant. We pray seisin of the land, for you have vouched an infant within age, and this writ is given us by Statute[1] which says: 'The suit of the woman or of her heir etc. shall not be deferred etc., but let the buyer await etc.'; and we are demanding as heir of our mother. Judgment etc.

Herle. We are outside the degrees, and this your own writ shows. So we are not 'the buyer' [within the meaning of the Statute]; and it would be a great hardship if we lost our voucher.

Passeley. We pray the benefit of the Statute. Its words are general and comprise our case.

Bereford, J., looked at the Statute, and (said he) we will not now determine the meaning of the Statute; but in the present case, because of the hardship that otherwise would ensue, we will not deprive him of his voucher. Therefore let the voucher stand.

[1] Stat. Westm. II. (13 Edw. I.) c. 40: 'set expectet emptor, qui ignorare non debuit quod ius alienum emit, usque ad etatem waranti sui de warantia sua habenda.' Coke (Sec. Inst. 455) says that the buyer, within the meaning of this Act, must buy immediately from the husband.

117A. CAVE *v.* BARDOLF.[1]

Bref abatu, la ou le pleintif sey noma par diverse sournouns en le bref.

Un bref se abati qe un H. de Cave porta vers Thomas Bardulf purceo qu'il fust nomé par diverse surnouns en diverse precipes en un bref. Et hoc idem accidit termino Michaelis de Edward Charles etc.[2]

117B. CAVE *v.* BARDOLF.[3]

John Cave porta bref d'entré vers Thomas Bardulf et T. le fitz H. Bardulf par divers precipes, et voleit le bref en les queux les avant-ditz T. et T. ne ount entré etc.

Wilb. Il demandent certeinz tenemenz vers T. et T. en supposant qe ils sount diverses persones la ou la persone est un. Jugement de bref.

Rust. Checun precipe si est un bref. · Par qei responez en dreit de l'autre precipe.

Ber. En dreit de quel precipe deit il respondre? Vostre bref veut 'Summone predictos T. et T.' Par qei etc., etc.

118. ANON.[4]

De compoto en le monstravit.

Un *monstravit* d'accounte fust porté etc. 'receptor denariorum suorum,' ou il dist qu'il resceust de li certeyn jour draps a la value[5] de xl. marks etc. a vendre, et les vendi etc. et les deniers receust; item leyns *in eadem villa certis die et loco* et les vendi et les deniers receust; item un obligatioun *de debito* de v. li. et les deniers resceust; et xxx. soutz en argent etc. Et si fust le bref agardé bon, licet calumpniatum per Willelmum[6] qu'il girreit[7] le bref etc. quod fuit ballivus etc.

[8] En un monstravit de acounte 'quod fuit receptor denariorum

[1] *Vulg.* p. 48. Text from *A*: compared with *B*, *D*, *L*. [2] The last sentence only found in *L*. [3] Text from *M*. [4] Not in *Vulg.*, *B*. Text from *A*: compared with *D*, *L*. Headnote from *D*. [5] vaillance *D*. [6] Willeby *D*. [7] qe ygirreit *D*. [8] The following version from *L*.

117A. CAVE *v.* BARDOLF.

Misnomer in a writ. The same person named by different names.

A writ which one H. of Cave brought against Thomas [Bardolf] was abated, for he was named by divers surnames in divers praecipes in one writ. And the same thing happened in Michaelmas term in the case of Edward Charles.

117B. CAVE *v.* BARDOLF.

John Cave brought a writ of entry against 'Thomas Bardolf' and 'Thomas, son of H. Bardolf,' by different praecipes, and the writ said 'into which the said Thomas and Thomas have no entry etc.'

Willoughby. They demand certain tenements against Thomas and Thomas as if they were two persons, whereas they are one person. Judgment of the writ.

Ruston. Each praecipe is a writ by itself; so answer to the other praecipe.

Bereford, J. But in respect of which praecipe should he answer? Your writ says 'Summon the said Thomas and Thomas.' Therefore etc.

118. ANON.

Account. Difference between bailiffs and receivers.

A *monstravit de compoto* was brought against one as 'receiver of the moneys [of the plaintiff].' The plaintiff counted that on a certain day the defendant received from him cloths to the value of forty marks etc. to sell, and sold them and received the money: also wool in the same vill at a certain day and place, and sold it and received the money: also a bond for a debt of five pounds and received the money: and thirty shillings in silver etc. And the writ stood, though it was challenged by *Willoughby* on the ground that the defendant should have been called bailiff [and not receiver].

[1] In a *monstravit de compoto* against one as 'receiver of moneys,'

[1] A slightly different note of the same case.

suorum,' ou il dit qe certeyn jour le bailla dras a la vaillaunce de lx. marcs et il les vendi e les deners resceut et xxx. sous en argent. Et si fust le bref agardé bon. Et si fust le bref chalengé pur ceo q'il dirroit 'de tempore quo fuit ballivus suus' et non 'receptor denariorum.'

119. ANON.[1]

Bref de wast meintenu vers gardein en socage.

Hughe le fitz Thomas porta soun bref de wast vers sa miere des tenementz etc. 'in custodia sua racione minoris etatis [2] Hugonis et que tenentur in socagio.' Et le wast fust trové. Et fust agardé qu'il recoverast locum vastatum,[3] set quoad dampna remanet etc.

120. BISHOP *v.* FOLYOT.[4]

En un bref d'entré le tenant voleit avoir rendu. Survynt un et dyt qe le tenant luy avoit lessé ceux tenemenz a terme des aunz et dedeinz son terme lui fist un relees, le quel il moustra. Le tenant fust apposé de court s'il fust son fait ou noun. Et il dyt qe noun, et l'autre tendist d'averer le contrarie. Et fust l'averement receu ; et il furent ambideux chacez par la court a trover seurté d'attendre l'enquest.

Richard Biscope [5] porta un bref d'entré vers Johan Foliot et Sara sa femme et [6] counta vers eux. J. et S. disseint qe ceo qe Richard avoit dit fut verité. Pus vint un W. et [7] dit qe mesme celui J. lui avoit granté memes les tenemenz de xx. aunz ; [8] denz quel terme il le relessa,[9] issint qe jour de bref purchacé il fut seisi de [10] franctenement etc. ; et par collusion fet entre Richard e J.,[11] dont il suwit ceste bref en deceite de la court a toller lui son franctenement. Par qei il [12] prie qe nul rendre ne conisaunce qe celui fet [13] ne lui turne en prejudice. Et mist avant le quiteclame Johan [14] qe ceo tesmoigna.

[1] Not in *Vulg.*, *B*. Text from *A* : compared with *D*, *L*. [2] *Ins.* eiusdem *L*. [3] vastum *A* ; vastatum *D*. [4] Not in *Vulg*. Text from *M* : compared with *R*, *P*, *L*. As a headnote we give the version that is found in *Z*. [5] Bishop *R*, *L* ; Bichop *P*. [6] *Om.* Sara . . . et *M*. [7] Hunt. pur un W. *R*, *P*, *L*. [8] a terme de deux aunz *R* ; a terme de xij. aunz *P* ; xix. *L*. [9] *Ins.* etc. *R* ; a ly etc. *P*. [10] du *R* ; del *P*. [11] et dit qe Ric. suist cesti bref par collusion fete entre ly et J. *P*. [12] *Om.* il *M*. [13] qyl fount *R* ; qil siwent *L*. [14] avant fet *P*.

the count was that on a certain day the plaintiff bailed cloths to the value of sixty marks [to the defendant], and he sold them and received the money: also thirty shillings in silver. The writ was adjudged good, though it was challenged because it ought to have said 'of the time during which he was his bailiff' and not 'receiver of his moneys.'

119. ANON.[1]

Action of waste by a ward against his mother and guardian.

Hugh, son of Thomas, brought his writ of waste against his mother for the tenements etc. in her custody by reason of Hugh's nonage, the tenements being held in socage. Waste was found. It was adjudged that he should recover the place wasted; but as to damages [the case stands over].

120. BISHOP *v.* FOLYOT.[2]

Intervention in an action of a third party to allege collusion and deceit of the court. *Semble* the statutory right of the termor to intervene for the prevention of a collusive recovery extends to the case of a termor who asserts that a release in fee has been made to him. The parties to an issue which involves a charge of deceiving the court are compelled to find security to abide the inquest.

Geoffrey Bishop brought a writ of entry against Richard Foliot and Amice his wife and counted against them. Richard and Amice said that what Geoffrey had said was true. Afterwards came *Huntingdon* on behalf of one Geoffrey White and said that this Richard had granted the tenements to him for a term of years, within which term Richard released to him, so that on the day of the writ purchased he [the intervener] was seised of the freehold etc., and that by collusion made between demandant and tenant, this writ was sued in deceit of the Court to deprive him of his freehold. Wherefore he prayed that no render or confession that they might make should turn to his prejudice. And he put forward Richard's quitclaim which witnessed this.

[1] This case is Fitz., *Wast*, 1, and is cited in Sec. Inst. 305.
[2] Proper names from the record.

Berr. Lessastes[1] vous ceux tenemenz a lui auxi com il ad dit e pus lui faites[2] cele quiteclame?

Johan dit q'il lui lessa ceux tenemenz a terme,[3] mès unqes autre fet de lui ne avoit.

Hunt. Qe vous nous relessastes[4] denz nostre terme par ceo fet, prest etc.

Berr. Trovez[5] seurté de une part e d'autre pur la deceite d'atteindre[6] l'enqueste.

Et sic fecerunt.

{*Berr.*[7] fist amdeus trover seurté de attendre l'enquest. Si ele passe contre W., *questio* s'il put estre aider par statut com termer.}

Note from the Record.

De Banco Roll, Easter, 2 Edw. II. (No. 176), m. 49d, Hertf.

The roll is damaged; but it allows us to see that Geoffrey Bisshop demands against Richard Folyot and Amice his wife certain tenements in 'Hicche' (Hitchin) as his right and inheritance, into which Richard and Amice had no entry, except after (*post*) a demise made by one Cristiana,[8] a doweress, to one Wychard [Folyot], and which [after her death] ought to revert to the demandant.

Richard and Amice come and cannot deny the demandant's right. Thereupon intervenes one Geoffrey le Whyte. He says that Richard and Amice in deceit of the King's court [and of the intervener] have rendered the land to the demandant, [whereas] Richard, whose right that land was, without Amice having anything therein, had five years ago demised it to the intervener for a term of nineteen years; and that afterwards Richard remised and quitclaimed to the intervener all right and claim that Richard had in the land, by a charter which the intervener produces, and which witnesses that Richard remised and utterly from himself and his heirs for ever quitclaimed to the intervener all right and claim that he had or in any

121. ANON.[9]

Disseisine fet a force et as armes.

Un assise de novel diseisine fut porté vers un homme qi fit defaute, par qai l'assise fut agardé. Par quel assise fut trové q'il fit la diseisine

[1] J. lessaste *R*. [2] forc' *M*; feytes *L*. [3] *Ins.* des aunz *R*, *L*; de xx. aunz *P*. [4] *Ins.* les tenemenz auxi cum il dit *P*. [5] Avet *R*; trove *L*. [6] descent dentendre *R*; deceyte de atendre *P*; desceyte de entendre *L*. [7] From a note of the case in *X*. [8] Apparently the widow of —— Bisshop. A copy of the record in MS. *Y* says Thomas Bishop. [9] Not in *Vulg*. Text from *M*: compared with *P*, *L*.

Bereford, J. Did you [Richard the tenant] lease these tenements as he has said, and then did you make him this quitclaim?

Richard said that he leased these tenements for a term, but that [the intervener] never had any other deed from him.

Hunt. You released during our term by this deed. Ready etc.

Bereford, J. Find security on both sides to abide the inquest because of the [charge of] deceit. (They did so.)

{Bereford [1] made both of them find surety to abide the inquest. *Qu.* whether, if the verdict goes against [the intervener], he shall be aided by the Statute as a termor.} [2]

Note from the Record (*continued*).

wise might have in the croft which sometime belonged to Wyscard Folyot in Bertone, to have and to hold to the intervener, his heirs and assigns etc.

The intervener therefore prays that he may not lose the land through the collusion practised between the demandant and the tenants.

And thereupon the demandant and the tenants being addressed (*allocuti*) by the Justices here touching the said deceit, the demandant says that he is not aware of any deceit (*non constat ei de aliqua deceptione*); and Richard Folyot (the male tenant) fully admits that he demised the land to the intervener for a term of nineteen years, but as to the writing of quitclaim in Richard's name which the intervener produces, Richard says that it is not his deed (*defendit quod predictum scriptum non est factum suum*), and thereof puts himself upon the country and upon the witnesses named in the writing.

Issue is joined, and a *venire facias* for five witnesses and twelve jurors is awarded for the octave of Trinity. There was a further adjournment; no verdict has been found. 'And be it known that the said writing is delivered to J. Bacun, the King's clerk, for custody.'

John Bacon was at this time chief clerk of the Court of Common Pleas.[3]

121. ANON.

Disseisin with force and arms.

An assize of novel disseisin was brought against a man. He made default. So the assize was awarded, and by the assize it was

[1] From another note of the same case.

[2] See Stat. Glouc. (6 Edw. I.) c. 11, which gave the termor the right to intervene.

[3] Calendar of Close Rolls (1307–13), pp. 41, 231. The copy of the record in MS. *Y*, f. 74 d, shows that Richard and Amice are mainprised to hear the verdict of the jury. So also Geoffrey. The manucaptors are liable 'corpora pro corporibus.'

a force et as armes. Et fut agardé un *capias*[1] de prendre a r[espondre][2] a la partie des damages.[3] Qe vint par le *capias*.

Ber. R[espone]z a la partie des damages, et au Roy del despit. Et finem fecit etc.[4]

122A. BILLING *v.* ETON.[5]

Quod permittat habere communam: ou dist est qe home ne put enlargir sa court de pree ne de bois einz solement de cortillage.

Robert de[6] Billing[7] porta le *quod permittat* vers Johan de Etone,[8] et counta q'a tort ne lui soeffre avoir sa comune pasture en C. apurtenant a son franctenement en xij. acres de tere arrable[9] en mesme la ville, nomement a pestre boefs et autre[10] manere de[11] animaille, scilicet,[12] après les[13] bles syez et emportez, et le terce an par my e par tut l'an quant la terre gist warret; et dont un [R.] son auncestre[14] etc. en son demene com de fee et de dreit en temps de pees etc.,[15] les esplees prist etc. en pessaunt ses avers et boefs, et[16] autre manere de[17] issue de pasture montant etc.; et de R. descendit le dreit etc. a W. com a fitz et heir; de W. pur ceo q'il entra en religion en ordre de Frere Prechour[18] a Oxoneforde et fut profès, par quel profession et demise sanz heir de son corps descendit le dreit a R. com a frere[19] et heir q'ore demande; de[20] la quel l'avantdit J. diseisit l'avantdit R. et pus le terme etc.[21]

West. La ou il demande cele[22] comune etc. il n'ad[23] en tut mesqe x. acres,[24] dont les viij. acres en temps son auncestre, de qui seisine il demande, furent[25] waste, issint qe meme cestui Johan com seignur de ceux viij. acres de waste apprwa[26] par forme de statut[27] sauve[28] a lui suffisaunt[29] pasture. Et[30] en dreit de deuz acres de terre,[31] vous dit qe ceux etc. furent joinauntz a son mees, e pur

[1] cape *L.* [2] a prendre lei a r[espoundre] *P*; a prendre le et a r' *L.* [3] *Om. until after next* damages, *M.* [4] *Add* cuius contrarium videbatur termino Trinitatis anno quinto *P*; cuius contrarium videtur Trinitat. iiij. *L.* [5] Not in *Vulg.* Text from *M*: compared with *R*, *P*, *L*. Headnote from *Y*, which gives two versions of this case. [6] *Om.* de *R.* [7] Bolling *P*; Belling' *L.* [8] *Om.* vers . . . Etone *R.* [9] arrables *M*, *L*; arables *P.* [10] tote *R*; totes *P.* [11] dautre *R*; de altre *P.* [12] *Ins.* les deux anz *R.* [13] *Om.* les *M.* [14] *Ins.* fut seisi *R*, *P.* [15] *Ins.* en temps le Roy H. etc. *L.* [16] *Om.* et *M*, *P.* [17] boefs etc. et en *R.* [18] freres prechours *P.* [19] fitz *M*; frere *R*, *P.* [20] par *M.* [21] R. qe heir il est pus le premer passage etc. *R*; *sim.* *L.* [22] sa *R*, *P*, *L.* [23] il ny ad *P.* [24] *Ins.* de terre *R*, *P*, *L.* [25] fir' *M.* [26] aprowa *R*, *P.* [27] de waste *L.* [28] salve *R*; salvee *P*; save *L.* [29] suffisaunce *L.* [30] *Om.* et *M*; etc. *R*, *P*, *L.* [31] *Ins.* et *M*; *ins.* il *P.*

found that he made the disseisin by force and arms. A *capias* was awarded to take him to answer to the party for the damages. And he came by the *capias*.

Bereford, J. Answer to the party for the damages and to the King for the despite.

He made fine.[1]

122A. BILLING *v.* ETON.[2]

Approvement of common by lord. Discussion of the nature of that enlargement of his curtilage which is allowed to a lord by Statute.

Robert of Billing brought the *quod permittat* against John of Eton, and counted that wrongfully [the defendant] does not suffer him to have his common pasture in C. appurtenant to his freehold in twelve acres of arable land in the same vill: namely, to pasture oxen and all other manner of animals, to wit in two years after corn cut and carried and in the third year throughout the year when the land lies fallow; whereof one [R.] his ancestor [was seised] in his demesne as of fee and of right in time of peace etc. in the time of King Henry etc. (taking esplees etc. in pasturing his cattle and oxen and in other issues of the pasture to the amount of etc.), and from R. the right descended etc. to W. as son and heir; and from W. (because he entered into religion in the Order of Friars Preachers at Oxford and was professed) the right, by reason of the said profession and demise without an heir of his body, descended to Robert, the now demandant, as brother and heir; and the said J. disseised the said R. [the ancestor] since the term [of limitation].

Westcote. Whereas he demands this common etc., there are in all but ten acres, whereof in the time of the ancestor upon whose seisin he demands, eight acres were waste, so that John as lord of these eight acres of waste approved according to the form of the Statute saving to [the plaintiff] sufficient pasture.[3] And in respect of the two acres of land, he [the defendant] tells you that the [lands which he has enclosed] are adjoining his house, and, to enlarge his court according

[1] A reference to a contrary decision of later date is added in some of our books.

[2] Proper names doubtful.

[3] As to the eight acres, the Statute relied on is Stat. Merton (20 Hen. III.), c. 4. It will have been observed that, according to the demandant, the land was not waste but arable.

enlargir sa court solonc forme de statut de Westmustre etc.[1] si ad il enclos[2] les ij. acres com bien lui leust.

Toud. En dreit des viij. acres nous voloms averrer q'il furent arrables[3] solonc ceo qe nostre bref suppose. Et quant a[4] ij. acres nous entendoms qe vous grantez la diseisine; qar en temps le Roy Henri[5] vous pristes cele terre pur enlargir vostre court, a quel temps il n'y avoit nul estatut ordeiné de ceo.[6] Par qai par estatut ne put estre eidé;[7] et dont piert il qe vous nous avez disseisi.[8]

Ber. Il vous dit q'avaunt statut si prist il cele terre pur enlargir sa court; et si ele seit[9] ore wast, si[10] poeit il[11] unqore par statut, et[12] si vous voillez la demurrer en jugement,[13] a vostre peril soit.[14]

Toud. Pur enlargir sa court ne put il[15] avower; qe parentre sa court et la[16] terre q'il ad enclos[17] il y ount ij.[18] acres de boys; issi qe, si la[19] court fut trop estreit, de cele[20] boys la pout il avoir enlargi. Par qei etc.

Ber. Le statut ne fet[21] a entendre si largement qe homme pusse prendre et enclore autre[22] comune par reson de[23] seignurye a fere pré ne pasture denz sa court; mès tauntsoulement enlargir[24] sa court de curtilage ou gardyn ou autre chose necessarie a sa court.[25] D'autrepart, la cause pur qei cest estatut fut fet fut[26] qe la ou homme a comencement ne fut pas de power a fere sa court assez large, lirreit a lui qaunt son power et sa meyné[27] acrust[28] d'enlargir sa court et[29] fere curtilage et[30] gardyn[31] de la comune[32] a sa court joynaunt[33] par reson de sa seignurye etc.

122B. GILLYN *v.* DITONE.[34]

Ceo vous moustre Wauter Gillyn qe ci est qe Ive Ditone qe illoeqes est atort ne lui soffre avoir sa commune pasture en C. appurtenant etc. scilicet, en xij. acres de terre et ij. acres de pasture a tote manere de

[1] le secunde *R*; solum ceo qe stat. de Westm. seconde doune *P*. [2] clos *L*. [3] terre arable *R*, *P*, *L*. [4] *Ins.* lez *P*. [5] *Ins.* si grantes vous qe *R*, *L*. [6] nul tiel estatut *R*, *P*, *L*. [7] ne vous poet eyder *R*. [8] et per consequens vous grantes disseisine *R*; *sim. L*. [9] fut *R*; fust *L*. [10] sil le *R*. [11] *Ins.* fere *R*, *P*. [12] par qey *R*, *P*, *L*. [13] *Ins.* demuret *R*; *sim. P*, *L*. [14] *Om.* soit *R*, *P*. *In X (a short note) Bereford's remark is:* Nous entendoms qe ceo fu comune lei tut seit ceo affirme par statut. [15] *Ins.* ceo *R*, *P*, *L*. [16] cele *R*, *P*, *L*. [17] enquels *R*. [18] viij. *R*, *P*; si joynent vij. *L* [19] sa *R*, *L*; cele *P*. [20] ceu *R*. [21] *Ins.* pas *P*; ne voet *L*. [22] autri *P*. [23] *Ins.* sa *R*, *P*, *L*. [24] denlarg' *R*; de enlarg' *P*. [25] autrez choses a sa court necessaries *P*. [26] fet si est *P*. [27] mene *P*. [28] crust *L*. [29] a *R*, *P*, *L*. [30] ou *R*. [31] *Ins.* etc. *R*, *P*. [32] *Ins.* scil. joynte *P*. [33] *Om.* joynaunt *P*. [34] Text from *Y*, f. 81.

to the form of the Statute of Westminster the Second, he has enclosed the two acres as well he might.

Toudeby. In the matter of the eight acres, we will aver that they were arable as is stated in our writ. As to the two acres, we understand that you concede the disseisin, for you concede that you took this land to enlarge your court in the time of King Henry, in which time no Statute was ordained in this matter; so the Statute [1] does not help you, and it thus is evident that you have disseised us.

Bereford, J. He tells you that before the Statute he took this land to enlarge his court, and, if it were now waste, he could still take it by the Statute. If then you wish to demur in judgment at this point, at your peril be it! [2]

Toudeby. For an enlargement of his court he cannot avow [the enclosure], for between his court and the land that he has enclosed there are two [3] acres of wood, so that, if the court was too narrow, he could have enlarged it by this wood. Wherefore etc.

Bereford, J. The Statute has not so wide a meaning that by reason of his seignory a man may take and enclose another's common in order to make a meadow or pasture within his court; it only permits him to enlarge his court by curtilage or garden or what else is necessary for his court. On the other hand, the cause why this Statute was made was that where at the beginning a man had not the means to make his court sufficiently large, then, if afterwards his means and his household increased, it should be lawful for him to enlarge his court and, by reason of his seignory, to make curtilage and garden out of the common adjoining his court, etc.[4]

122b. GILLYN *v.* DITONE.

Sheweth unto you Walter Gillyn, who is here, that Ivo Ditone, who is there, wrongfully does not suffer him to have his common pasture in C. appurtenant etc., namely in twelve [5] acres of land and

[1] Stat. Merton (20 Hen. III.) c. 4; Stat. Westm. II. (13 Edw. I.) c. 46. The latter says: 'Occasione molendini ventricii, bercarie, vaccarie, augmentacionis curie necessarie aut curtilagii decetero non gravetur quis per assisam nove disseisine de communa pasture.'

[2] In one version of the case Bereford expresses the opinion that the Statute affirmed common law.

[3] Or 'seven' or 'eight.'

[4] Another version of this case follows.

[5] Perhaps it should be 'ten.'

animaille en temps overt par ij. anz et la terce an par mi tut l'an, et dont un [1] sun auncestre G. par noun fu seisi com de fee et de droit en temps etc. en temps le Roi Henri ael nostre seignur le Roi q'ore est, qe Dieu gard : de G. descendy le droit etc. a W. com a fiz et heir ; de W. pur ceo q'il se demist et entra en religion en ordre de Frere Prechour a Oxenford et fust profès,[2] a Wauter q'ore demande com a frere et heir ; de la quele mesme ceste Ive disseisy le dit G. puis etc. ; et s'il voet dedire etc.

Edone defendy etc. et demanda la vewe.

Hervy. Il vous dient qe ceo est vostre tort demeine. Responez.

Sire, nous vous dioms qe x. acres de terre de sa demande si fust un wast appurtenant a meisme la ville et nient terre gaignable.

Sire, le jour qe le tort fust fet a nostre auncestre terre gaignable. Prest.

Et alii contrarium.

Et qaunt a ij. acres, nous vous dioms qe nous sumes seignur de la ville, et nous avom enlargi nostre court de celes ij. acres com bien nous lust par statut, et [3] qe autre tort etc.

Frisquen. Sire, le tort nous feu fet en temps le Roi Henri, et le Roi Edward fist l'estatut. Jugement, si vous poez estre eidé par cele statut.

Bereford. Auxi com la meigné et les biens acressent, issi list au seignur enlargir sa court sanz grevance fere a nul de ses tenants.

Frisk. Vous dioms qe les ij. acres des queux nous pleignoms sunt enparkez de la court, issi qe ilui ad un boys de v. acres entre les ij. acres de queux [4] nous pleignoms, et la cort assez large, issi q'il ne sunt pas necesarie pur enlargir la curt par forme de statut. Prest del averer.

Et alii contrarium.

123. ANON.[5]

En un bref de dower porté vers tenant par ley d'Engleterre, le tenant pria eyde etc., et la femme dyt q'il fust le primer qi entra après la mort son baroun qi morust seisi. Et fust ousté etc.

Une femme porta son bref de dowere vers W. de Ros de Ing' [6] et demanda la terce partie.

[1] un J. *Y.* [2] *Ins.* de W. *Y.* [3] *Om.* et *Y.* [4] quei (?) *Y.* [5] Not in *Vulg.* Text from *M* : compared with *R*, *P*, *L*. Headnote from *Z*. [6] *Om.* de Ing' *P.*

two of pasture for all manner of beasts, during the open season in two years and during the whole year in the third year; and whereof one G., his ancestor, was seised as of fee and right in time [of peace], in the time of King Henry, grandsire of the present King (whom God preserve): and from G. the right etc. descended to W. as his son and heir; and from W., because he demitted himself and entered religion in the Order of Friars Preachers at Oxford and was professed, to Walter the now demandant; and whereof this same Ivo disseised the said G., after [the time of limitation]: and if he will deny etc.

Hedon defended etc. and demanded the view.

Stanton, J. They tell you that this is your own tort. So answer.

[*For defendant*]. The ten acres of land mentioned in his demand were a waste belonging to the said vill and not cultivated land.

[*For plaintiff*]. Cultivated land on the day when the wrong was done to our ancestor. Ready etc.

Issue joined.

[*For defendant*]. As to the two acres we say that we are lord of the vill, and we have enlarged our court by these two acres as well we might by Statute, and no other wrong [have we done].

Friskeney. The wrong was done in the time of King Henry, and King Edward made the Statute. Judgment, whether you can be aided by that Statute.

Bereford, J. As his household and his goods increase, the lord may lawfully enlarge his court without doing harm to any of his tenants.

Friskeney. We say that the two acres of which we complain are not contiguous to the court,[1] for there are two acres of wood intervening, and the court is large enough, so that they are not necessary for an enlargement of the court according to the form of the Statute. Ready to aver this.

Issue joined.

123. ANON.[2]

In an action for dower the tenant prays aid as tenant by the curtesy. Aid is denied on the ground that he was the first to enter after the husband's death. The tenant is driven from a special plea on the ground that it is tantamount to 'Never so seised etc.'

A woman brought her writ of dower against W. de Ros of Ing[manthorpe] and demanded the third part.

[1] The text says 'are imparked in the court.' But it seems fairly clear that some mistake has occurred. [2] This case is Fitz., *Ayde*, 160.

Wilb. Nous tenoms ceux tenemenz par la ley d'Engleterre del heritage Johan le fitz [1] W. de Cantelowe,[2] sanz qi nous ne pooms respoundre, et prioms eide de lui.

Malb. Il fut le primer q'entra après la mort nostre baroun, qe de ceux tenemenz morust seisi en son demene com de fee. Jugement si de son tort demene eide deyve avoir.

Berr. Si le cas fut [3] tiel com il dit vous n'averez pas eide.[4]

Rust. Si nous feisoms defaute il serra r[eceu] a defendre son dreit. Par qei il semble qe l'eide est necessarie. (Hoc non obstante il fut ousté per raciones predictas.)

Pass. Ceux tenemenz furent a [5] un Eustace [6] qe avoit ij. barouns: un W. de Cantelowe.[7] W.[8] avoit un fitz et [9] morust. Et ele prist autre baroun W. de Ros de Ing', qe [10] avoit engendure. Et pus morust E.; après qui mort W. de Ros tynt ceux tenemenz par la curtesie. Le quel William de Roos granta mesmes les tenemenz a W. fitz W. de Cantelowe,[11] baroun mesmes cesti [12] q'ore demande dowere, a terme de sa vie,[13] issi qe si [14] W. baroun mesme ceste femme deviast [15] plus tost qe W. de Roos q'il avereit [16] son primer estat. Dont W. baroun mesme ceste femme morust. Par qei W. de Ros entra le [17] ditz tenemenz par vertue del covenant entre eux fet; issint q'il est en son primer estat, et la reversion a J. le fitz W.[18] appent. Jugement, si eide de lui deive [19] avoir.

Wilb. Taunt amount qe nostre [20] baroun ne fut pas seisi en son demene com de fee [21] issint qe dower nous pout.[22]

Pass. Q'il ne fut pas seisi [23] qe [24] dower la pout, prest etc.

Et alii econtra.

124. ANON.[25]

En un scire facias le tenant fust receu d'averer qe le piere le demandant fust morte long temps avant le temps del recoverir de quel le scire facias issist. Et assignant causam in placito pur ceo que l'autre pout avoir porté mesme le sournoun et avoir recoveri; et, si sic, cele recoverer ne poet.

Un A. suwyt un *scire facias* vers W. a savoir moun [26] sil savoyt [27] rien dire pur qei execucion de jugement des tenemenz qe S.[28] son pere,

[1] *Om.* Johan le fitz *P, L.* [2] C. *R.* [3] soit *R, P*; seit *L.* [4] *Add.* de ly *P.* [5] furent del heritage *L.* [6] E. *R.* [7] C. *R*; Catelyne *P.* [8] le quel W. *R, P, L.* [9] *Ins.* W. W. le pere *R*; *ins.* W. le pere *P, L* [10] et *R, P, L.* [11] Cant. *R, P.* [12] ceste *R, P, L.* [13] *Ins.* demene *R, P, L.* [14] *Om.* si *R.* [15] morust *R.* [16] reavereit *R, P.* [17] les *R, P, L.* [18] *Ins.* de C. *R, P, L.* [19] ne devoms *R, P, L.* [20] vostre *L.* [21] *Om.* en . . . fee *P.* [22] fee auxi com nous avoms dit *R*; *sim. L.* [23] *Ins.* issint *P.* [24] Il fut seisi qe *L.* [25] Not in *Vulg.* Text from *M*: compared with *R, P, L.* Headnote from *Z.* [26] *Om.* moun *P, L.* [27] savereyt *P.* [28] *Om.* S. *R, P.*

Willoughby. We hold these tenements by the curtesy of the inheritance of John, son of W. of Cantilupe, and without him we cannot answer. We pray aid of him.

Malberthorpe. He [the tenant] was the first to enter after the death of our husband, who died seised of these tenements in his demesne as of fee. Judgment, whether he should have aid where he is the wrongdoer.

Bereford, J. If the case be as he says, you [the tenant] shall not have aid.

Ruston. If we [for the tenant] made default, he [the heir] would be received to defend his right; wherefore it seems that aid is necessary. (Notwithstanding this, he was ousted [from his aid-prayer] for the reasons aforesaid.)

Passeley. These tenements belonged to one Eustacia, who had two husbands.[1] The first was W. of Cantilupe. He had a son and died. She took another husband, W. de Ros of Ing[manthorpe], and had issue [by him]. Then she died, and W. de Ros held these tenements by the curtesy. He granted them to W. (the son of W. of Cantilupe, and husband of the woman who now demands her dower) for the term of his life, so that if he (the demandant's husband) died before W. de Ros, he [W. de Ros] should have again his first estate. Then W. [the demandant's husband] died; whereupon W. de Ros, by virtue of the agreement made between them, entered on the said tenements in his first estate, and the reversion belongs to John, son of W. [of Cantilupe the younger.] Judgment, whether we ought not to have aid of him.

Willoughby. [Your plea is] tantamount to this: that our husband was never seised in his demesne as of fee so that he could endow us.

Passeley. Never seised so that he could endow. Ready etc.

Issue joined.

124. ANON.

A *scire facias* is maintained for the execution of a judgment against a deforcer who was not a party to the action and is not heir of a party.

One A. sued a *scire facias* against W. bidding him clearly inform [the Court] whether he had anything to say why execution should not be made of the judgment touching the tenements which S. his

[1] Apparently the tenant is the stepfather of the demandant's late husband and has prayed aid of his stepgrandson. The Christian names here stated must not be relied upon. The pedigree will be given in a later case. See below, p. 135.

qi heir etc., recovera vers un A. par jugement de la court nostre seignur le Roy l'an etc. ne se devereit[1] fere.

Pass. Cest un bref de garnisement qe ist[2] hors des roules. Par qei nous prioms qe vous moustrez roules[3] qe tesmoignent le procès avant[4] q'il[5] soit[6] garant a ceo[7] bref.

Berr. Nous avoms acordé entres nous et[8] par commune assent[9] grantee cesti bref. Par qei responez.[10]

Pass. N'entendoms mie qe vers nous cesti bref gise,[11] pur ceo qe nous ne sumes pas celui qe fut partie a cele recoverir ; dount[12] plus naturelement girreit vers le heir celuy qe fut partie ;[13] qe par cas, si le bref fut porté vers lui, il pout tel estat clamer[14] qe vous ne poiez[15] action avoir.

Malb. Le amenez[16] ove vous si vous entendez q'il vous vaudra.[17]

Ber. Le bref veot estre porté vers celui q'est deforceour, et autre deforceour n'ad il qe vous. Par qei nous agardoms le bref bon.[18]

Pass. La ou vous portez cesti bref de un recoverir a qey vostre pere fut partie, nous vous dioms qe long temps avant ceo recoverir vostre pere morust ; e ceo voloms averrir.

Malb. A ceo[19] averrement ne devez avenir encontre le recorde qe tesmoigne le recoverir nostre pere, q'est si haut et si sollempne en sey. Jugement.[20]

Ber. Qei ad il fet si longe temps q'il n'ad pas suwy[21] etc. ?[22]

Malb. Il est[23] denz age.

Ber. Ou est il ore ?

Malb. Veez le[24] cy par attourné.

Herle. Il est possible q'il y avoit[25] autre qe porte[26] mesme le surnoun e qe[27] recoveri,[28] et qe vostre pere morust avant cel recoverir ; donc[29] nous entendoms qe cele averrement gist pas.[30]

Malb. Nous[31] voloms averrir qe par nostre bref recoverames[32] etc. Et alii econtra.[33]

[1] devoit *R* ; dust *P*. [2] issera *L*. [3] *Om.* par . . . roules *P*. [4] *Om.* avant *R*. [5] qe *R*. [6] avaunt qest *P*. [7] proces atteynt qil seit garr' a ceu *L*. [8] *Om.* et *P*, *L*. [9] *Ins.* et *P*. [10] *Ins.* etc. *R*, *P*. [11] i gise *R* ; y gise *P*. [12] qar *R*, *P* ; car *L*. [13] *Ins.* etc. *R*, *P*. [14] cas sil fut garni par cel bref de garnissement il pureit tele chose dire *P*. [15] porrez *R* ; pouriez *P* ; porriez nul *L*. [16] La menez *R*. [17] sil vous vaudra *L*. [18] qei le bref est asset bon *R* ; *sim. L*. [19] tiel *R* ; tel *L*. [20] *Om.* jugement *R*. [21] sewy *R* ; siwy *P*, *L*. [22] *Om.* etc. *R*, *P*. [23] fut *R*, *P*. [24] Il est *P* ; Voet le *L*. [25] *Ins.* un *P*, *L*. [26] portast *P* ; porta *L*. [27] qil *R*, *P*. [28] *Ins.* etc. *R*, *P*, *L*. [29] par qey *R*, *P*, *L*. [30] *Om.* pas *P*, *L* ; qe l'averement i git *R*. [31] Dites ceo et nous *R*, *L*. [32] qe nostre pere recovery *R*, *P* ; *add* si vous dotez cel la *P*. [33] *Om.* et . . . econtra *R*, *L* ; et sic pendet *P*.

[the plaintiff's] father, whose heir he is, recovered against one [X.] by the judgment of the King's Court in such a year.

Passeley. This is a writ of garnishment[1] which issues forth of the rolls; wherefore we pray that you show the rolls which witness the process, so that thereby the writ may be warranted.

Bereford, J. We [Justices] have agreed among ourselves and by common consent have granted this writ. Therefore answer.

Passeley. We do not think that this writ lies against us, for we are not the person who was party to that recovery; and the writ would more naturally lie against the heir of the person who was party; for perchance, were it brought against him, he could claim such an estate that you could not have an action.

Malberthorpe. Bring him with you, then, if you think that he will avail you.

Bereford, J. The writ is to be brought against the deforcer; and here he has no deforcer but you. We adjudge the writ good.

Passeley. Whereas you bring this writ upon a recovery to which your father was party, we tell you that your father died long before the recovery. And this we will aver.

Malberthorpe. You ought not to get to that averment against a record—so solemn and so high in itself—which witnesses a recovery by our father.

Bereford, J. What has [your client] been about all this long time that he has not sued?

Malberthorpe. He was within age.

Bereford, J. Where is he now?

Malberthorpe. See him here by his attorney.

Herle. It is possible that your father died before the recovery and that the person who recovered had the same surname. Therefore we think that this averment lies.[2]

Malberthorpe. If you doubt it, we will aver that our father recovered etc.

Issue joined.

[1] That is, a writ 'warning' a person to appear. The word comes from the inchoative tenses of *garnir*, to warn.

[2] Another reading is 'does not lie,' but this is less acceptable.

125. ANON.[1]

Nota qe homme n'avera jammès bref de faux jugement saunz ceo qe le jugement se taille sour l'accion etc.

Nota en bref de faux jugement le tenaunt[2] dit qe les seuters agarderent q'il n'avereit[3] pas la vewe en un bref de dreit ou il avoit[4] la vewe en un autre bref ou[5] il fut noun suwy, fut agardé q'il ne prist rien, pur ceo qe le jugement ne fut mie rendu sur le principal.

126. ANON.[6]

Nota ou homme est seisi de[7] escuage il fra bone avowrie pur[8] homage.

127. ANON.[9]

Si un homme sanz plè conust sei estre tenuz en un dette en court[10] a un certein jour, si jour de la paye passe, il ne avera mie bref[11] hors de la conisance de lui liverer la moyté de[12] terres de celui qe conust, sanz ceo q'il ne seit mené[13] en court par procès de ley, c'est a savoir par bref de dette. Et issint est le statut de Westmuster seconde a entendre la ou il voet 'per breve et tunc sit in electione illius qui sequitur.'[14]

[1] Not in *Vulg.* Text from *M*: compared with *P*, *L*. [2] jugement ou le pleyntif *P*, *L*. [3] suyters donerent faux jugement en ceo qil agarderent qil navereyt *P*, *L*. [4] dreit pur ceo qil avoit eu *P*; *sim. L*. [5] bref a qel *P*, *L*. [6] Not in *Vulg.* Text from *M*: compared with *P*, *L*. [7] del *L*. [8] *Ins.* le *L*. [9] Not in *Vulg.* Text from *M*: compared with *P*, *L*. [10] *Ins.* qe porte record a payer *P*; *ins.* a payer *L*. [11] *Ins.* a vicounte *P*, *L*. [12] des *L*. [13] amene *P*. [14] dette, par estat. de West. sec. qe fet pas (?) soulement a entendre la ou conisaunce est fait par bref et nent saunz bref et tunc sit in electione illius etc. *P*; dette par quele statute de Westm. secunde soulement fet a entendre *L*, *and then like P*.

125. ANON.

The writ of false judgment cannot be used except where judgment has been given upon the main question.

Note that in a writ of false judgment the tenant said that the suitors [in the local court] gave false judgment in that they awarded that in a writ of right he should not have a view, as he had had a view in another writ in which [the demandant] was nonsuited. It was adjudged that [the tenant] should take nothing [by the writ of false judgment] because the judgment was given [on a by-point and] not on the main matter.

126. ANON.

Note that if a man is seised of escuage, he can make a good avowry for homage.

127. ANON.

If without plea a man in a court of record makes conusance that he is bound in a debt [to be paid] on a certain day, then, when the day for payment is past, [the creditor] shall not have a writ to the sheriff issuing out of this [recorded] conusance for the delivery to him of a moiety of the conusor's lands, unless the conusor was brought into court by process of law: that is to say, by writ of debt. Thus is to be understood the Statute of Westminster II., which says: '[When a debt is recovered or is knowledged in the King's Court or damages are adjudged] it shall henceforth be in the election of him who sues for the debt etc.'[1]

[1] Stat. Westm. II. (13 Edw. I.) c. 18: 'Cum debitum fuerit recuperatum vel in curia regis recognitum vel damna adiudicata sit de cetero in electione illius qui sequitur pro huiusmodi debito aut damnis etc.' This is the section which gives the writ of *elegit*.

128A. BUCKLAND *v.* BUCKLAND,[1]

alias

MERTON *v.* OKELAND.

Quid iuris clamat.

William de Bokelond[2] porta soun *quid iuris clamat* vers Alice qe fut la femme Rauf de C.[3] a mostrer[4] qel dreit ele clama en une carué de terre, lxx. acres, vj. acres de pree, l. acres de bois ov les apurtenaunz en C., de les quex J. de Bokelond[5] avoit conu la reversioun a ly etc.

Pass. Avaunt cez houres Alice la femme Rauf de C. conust certeynz tenemenz estre le dreit Richard de Mertone[6]; par[7] qele conisaunce Richard graunta lez avauntdiz tenemenz, ensemblement ov les tenemenz q'il mesme tint, a la dite Alice a tenir a tote sa vie, et si Richard deviast avaunt Alice rendaunt a lez heirs Richard une rose par an pur touz serviz; issint qe après la mort Richard Alice tint par mesme[8] la conisaunce. Dount de Richard, pur ceo q'il morust saunz heir de soun corps, descendy le dreit de la reversioun et devoit descendre a J. Bokelond, cum a frere et heir. Et Johan siwi hors de la Chauncelerie a[9] Tresorer et as Barouns del Escheker qe eux maundassent le tranescrit del plee[10] de la fyn entre Richard et Alice a[11] Sire Roger Brabazoun. Par qei le pee de la fin vint; issint qe Johan siwy le *scire facias* vers Alice 'si ele savoit rienz dire par[12] qei la chose contenu en la fyn qe se leva entre Richard soun frere et ly ne se devoit fere.' Par qei Alice vynt en court et conust qe ele tynt partie des tenemenz a terme de sa vie et partie en fee par serviz de une rose par an pur touz maneres des[13] serviz, et mist avaunt quiteclamaunce qe fut le fet Richard frere Johan. Et Johan tendit d'averir qe le jour de la confectioun de la quiteclamaunce Richard soun frere fut seisi. Et Alice dit le revers. Issint qe Johan fut nounsiwy. Par qei Alice departi hors de court saunz atourner.[14] Et demaundoms jugement si par conisaunce fete puis cel temps a altre persone devoms atourner.

Malm. Vous estes venu en court a mostrer[15] qel dreit vous clamez

[1] Not in *Vulg.* Text from *P*: compared with *L.* [2] Hokland *L.* [3] Rauf de Anseys *L.* [4] a savoir mon *L.* [5] Hokland *L.* [6] Mortoun *L.* [7] pur *L.* [8] par mye *L.* [9] au *L.* [10] *Corr.* pie (?); pee *L.* [11] devaunt *L.* [12] pur *L.* [13] *Om.* maneres des *L.* [14] attourneyment *L.* [15] conustre *L.*

128A. BUCKLAND *v.* BUCKLAND,
alias
MERTON *v.* OKELAND.

See the headnote to the next case.

William of Buckland brought his *quid iuris clamat* against Alice, sometime wife of Ralph of C., [calling upon her] to show what right she claimed in one carucate of land, seventy acres [of pasture], six of meadow, and fifty of wood, with the appurtenances in C., of which John of Buckland had confessed the reversion to him [William, by a fine that was being levied between William and John].

Passeley. Before now Alice, the wife of Ralph of C., made conusance that certain tenements were the right of Richard of Merton, and upon that conusance Richard granted those tenements, together with those that he himself held, to the said Alice to hold for her life, and if Richard died before Alice she was to render to the heirs of Richard a rose every year for all service; so that after Richard's death Alice held by the said conusance. And from Richard, since he died without an heir of his body, the right of the reversion descended and ought to descend to John Buckland as brother and heir. And John sued out of the Chancery a writ to the Treasurer and Barons of the Exchequer bidding them send the transcript of the foot of the fine between Richard and Alice to Sir Roger Brabazon [C.J.B.R.]. So the foot of the fine came, and then John sued the *scire facias* against Alice [calling upon her to let the Court know] 'if she had anything to say why the matter contained in the fine levied between Richard [John's] brother and her should not be executed.' So Alice came into court and confessed that she held part of the tenements for the term of her life and part in fee by the annual service of a rose for all manner of service, and she produced a quitclaim, which was the deed of Richard, John's brother. And John tendered an averment that on the day of the making of the quitclaim Richard his brother was seised. And Alice said the contrary. And then John was nonsuited. Wherefore Alice departed out of the court without attorning. And we [for Alice] pray judgment whether by a conusance subsequently made to another person [viz. by John to William] we can be bound to attorn.

Malberthorpe. You have come into court 'to show what right you

en taunt de tenemenz, et pur ceo adeprimes servez la garauntie[1] conisez quel dreit vous clamez, et puis countrepledez l'atournement.

Herle. A ceo n'avoms mester; qar qaunt vous portastes vostre primer bref vers nous a nous faire atourner, vous supposastes qe vous fustes hors, et par consequent tut estraunge a nous; et ore avez fet estat as autrez la ou naturelement unqes rienz ne se vesti en vous. Et demaundoms jugement si par[2] nule conisaunce puis fete devoms atourner.

Malm. Il foundent lour respounse[3] sur un nounsute la ou le point de lour pled[er][4] ne fut unqes descus.[5] Et demaundoms jugement si par tel r[espounse][6] pussent il nous oster saunz ceo qe eux pussent mostrer jugement qe chiet en record.

Ber. Vous dites mal, qar il prent sa r[esponse][7] de ceo qe nul estat ne se vesti en vous par atourner,[8] issint qe vous pussez estat fere a altrui; qe[9] moun auncestre si[10] il devie seisi dez serviz, jeo ne purroi estat fere a altrui[11] de ceux serviz par la[12] conisaunce saunz ceo qe jeo mesme ne fusse seisi.

Malm. Graunt duresse serroit[13] qe la reversioun[14] apent a moi dez serviz[15] et[16] jeo n'en[17] pusse a altrui fere estat, ou si tenemenz deyvent a moi revertyr qe jeo ne pusse graunter le dreit de la reversioun saunz ceo qe jeo ne fusse mesme[18] seisy.

Ber. Pur ceo par destresse devez fere vostre tenaunt[19] atourner a ceo qe vostre estat soit pleyn[20] etc.

Et habuit diem in festo S. Michaelis in tres septimanas. A quel jour rehercerent[21] lour primer respouns avaunt. Et habuit diem etc.

128B. MERTON *v.* MERTON.[22]

Quid[23] iuris clamat, ou il dit q'il ne dust attourner qar cognosceus prius porta un *scire facias* versus ipsum supponendo qu'il fut hors de cel dreit; et demaunda jugement si saunz mostrer coment cel dreit li fut acru puis [etc.].

Nota[24] de noun sute, et qaunt homme suppose par un bref le contrarie de ceo q'il supposa altre foitz par un autre bref.

[1] *Corr.* le garnisement et (?); le garrn' et *L.* [2] pur *L.* [3] resoun *L.* [4] ple *L.* [5] descus *L*; *a blank space P.* [6] si par cele nous *L.* [7] resoun *L.* [8] atournement *L.* [9] *Ins.* si *L.* [10] *Om.* si *L.* [11] autr' *L.* [12] *Om.* la *L.* [13] est *L.* [14] *Ins.* de services *P.* [15] *Om.* dez serviz *L.* [16] que *L.* [17] ne *L.* [18] jeo ne sey *L.* [19] Pur ceo devez destreindre et fere tenauntz *L.* [20] *End of case L.* [21] rehercerent *dubious P.* [22] Not in *Vulg.* Text from *M*: compared with *P* (which gives both versions of the case), *Q*, *R*. [23] Note from *P.* [24] Note from *M.*

claim' in certain tenements; so first fulfil the words of the writ that warned you to come and confess what right you claim, and then you can plead that you need not attorn.

Herle. We have no need to do that; for when you [John] brought your first writ [the *scire facias*] against us to make us attorn, you thereby supposed yourself to be 'out' and consequently a total stranger to us, and now you have made an estate to others, whereas by the nature of the case nothing was vested in you. We pray judgment whether we can be bound to attorn by any conusance that is subsequently made.

Malberthorpe. They found their answer on a nonsuit, and the point raised by the pleadings [on the *scire facias*] was never decided. We demand judgment whether by such an answer they can oust us unless they can show a recorded judgment.

Bereford, J. You are wrong. He founds his answer on the fact that no estate was vested in you by any attornment in such wise that you could make an estate to another. Suppose that my ancestor dies seised of services; I cannot by fine make an estate in those services to another unless I myself have been seised of them.

Malberthorpe. It will be a great hardship that a reversion with services should belong to me and that I should not be able to make estate to another, or that when tenements ought to revert to me I should not be able to grant the right of the reversion unless I myself have been seised.

Bereford, J. Then it behoves you to distrain your tenant into attorning so that your estate may be full.

A day was given three weeks from Michaelmas. At that day they rehearsed their first answer. A further day was given.

128b. MERTON *v.* MERTON.

By a fine tenements were limited to Alice for life to hold of the heirs of Richard by fealty and the annual render of a rose. Richard died. His heir John sued a *scire facias* out of the record of the fine against Alice to compel her to attorn. She pleaded a release in fee simple by Richard. John replied that at the date of the release Alice had nothing in the tenements, Richard being seised in demesne. Issue was joined, but on the day for the inquest John was nonsuited. John is now by a fine making conusance of the tenements to William, and Alice is summoned by the *quid iuris clamat* to say what right she claims. (1) *Semble* that she cannot be compelled to answer, since

Quid[1] iuris fut suy devers femme tenaunt a terme de vie par fyn: ou le conisour avaunt ces houres avoit suy un *scire facias* hors d'une fyn qe se leva entre soun frere, qy heir il fut, et mesmes cele femme, ou la femme mist avaunt relès de soun frere, quel plè prist issue par noun sute le conisour. Et ore cely conisour vent et conust mesme les services, les queux il n'ad pas derrené unqore, a un autre. L'autre suyt le *quid iuris clamat* devers la femme. *Quere* si ele attournera.

William de Mertone porta son bref de covenant vers Johan etc. Johan vint en court et granta le reversion des tenemenz qe une[2] Alice[3] tent etc.

{Richard[4] de Mertone porta sun bref de covenant vers une Alice de xvj. acres de terre, vj. acres de pree et la moieté de j. mies et une carué de terre ove les appurtenances en C. Alice vient en court et conust les tenemenz contenuz en le bref estre le droit Richard et ceo lui rendi etc. a avoir et tenir etc., et Alice et ses[5] heirs gar[antireient]. Et pur ceste reconissance, rendre, garanti, fin et concorde, Richard granta qe, si Alice lui survive, ke ceux tenemenz, ovesqe l'autre moieté del mees et de la carué de terre, dount Richard fut seisi, remaigne a Alice a tote sa vie, a tenir des dreis heirs Richard, par les services de une rose par an etc. Richard morust. Johan, frere et heir Richard, granta la reversion des tenemenz enterement a Willem de Okelonde par fin levé etc. Willem suy le *quid iuris clamat* vers Alice, la quele vient en court.}

Herle. Johan de Merton qe conust avant ceste hure fit venir le transcript[6] de un fin qe se leva entre Richard[7] frere Johan,[8] qi heir etc., et ceste Alice en la forme avantdite devant Sire R. Brabazon etc. Hors de quel fin tiel jour, tel an etc.[9] suwit un *scire facias* vers mesme ceste Alice a savoir moun[10] si ele savoit[11] rien dire par qei ele ne deust fere les services scil. la rose et[12] atourner a lui de sa foialté.[13] Ou ele vint et dit qaunt a xv.[14] acres de terre, vj. acres de boys, et vj. acres de pré, q'ele[15] tynt a terme de vie et fut prest a fere les services[16] etc. et d'attourner, et[17] qaunt a un[18] mees et[19] autres terres ele[20] ne deust attourner, purceo qe Richard frere Johan, qi heir

[1] Note from *Q.* [2] un *M*, *Q.* [3] autre *M*, *Q.* [4] The following from *Y.* [5] ces *Y.* [6] *Ins.* de pee *R.* [7] Rog.' *M.* [8] *Om.* Johan *M.* [9] *Ins.* Johan *P.* [10] mon *R.* [11] saveroit *P.* [12] *Om.* fere . . . et *P*, *Q.* [13] atourner etc. *P*, *Q.* [14] xvj. *R.* [15] q'il *R*; qe ele *P.* [16] *Om.* a . . . services *R*, *P*, *Q.* [17] *Om.* et *R.* [18] *Om.* un *R.* [19] *Ins.* lez *P.* [20] et a la car' de terre ele dit qe ele *R.*

John by bringing the *scire facias* admitted that he was not 'in,' but 'out' of the reversion. (2) *Semble* also that, if she puts forward Richard's release, its validity cannot be contested in these proceedings, since it is of earlier date than the fine between John and William. (3) Rights of action cannot be alienated. *Semble* that, when a reversioner dies, his heir has nothing that he can alienate until an attornment puts him 'in' the reversion. (4) Judicial writs (e.g. *scire facias* and *quid iuris clamat*) must not be used as substitutes for original writs.

William of Merton brought his writ of covenant against John. John came into court and made grant of the reversion of certain tenements that were held by one Alice [who is now summoned to declare what right she claims].

{Richard[1] of Merton brought his writ of covenant against one Alice for sixteen acres of land and six acres of meadow and a moiety of a house and of a carucate of land with the appurtenances in C. Alice came into court and made conusance that the tenements contained in the writ were the right of Richard, and rendered them to him, to hold [to him and his heirs], and she and her heirs would warrant. And for this conusance, render, warranty, fine and concord he granted that, if she should survive him, these tenements, with the other moiety of the house and of the carucate, whereof he was seised, should remain to her for her life to hold of his right heirs by the services of a rose every year. Richard died. John his brother and heir, by fine levied in this court, granted the reversion of the tenements integrally to William of Okeland.[2] William sued the *quid iuris clamat* against Alice. She came into court.}

Herle [for Alice]. On another occasion John of Merton, the conusor, caused to come into court before Sir R. Brabazon etc. the transcript of a fine levied between Richard his brother, whose heir [he is], and this Alice. Out of that fine in such a year and on such a day he sued a *scire facias* against this Alice, calling upon her to declare whether she had anything to say wherefore she should not do the service, to wit, render a rose, and attorn herself to him for her fealty. She came and, as to fifteen acres of land, six of wood, and six of meadow, said that she held them for the term of her life and was ready to do the services etc. and to attorn. And as to a house and the rest of the land she said that she ought not to attorn, because Richard, John's brother, whose heir he [John] is, had released etc.

[1] This preliminary statement has only been found in one of our books.
[2] He also appears as William of Merton.

etc., avoit relessé etc. Et mist avant quiteclamaunce qe ceo tesmoigna. Johan dit qe par la quiteclamaunce ne put ele estre eydé, par la reson qe Richard son frere, au temps qe la quiteclamaunce fut[1] fet,[2] fut seisi del demene. Alice dit q'en sa seisine, preist.[3] Johan le revers.[4] Sur qei enqueste se joynt. Et vous dioms qe au jour del enqueste retourné Johan fut nounsiwy. Par qei fust agardé qe Alice alast a Dieux[5] sanz jour. Et demandoms jugement del houre qe Johan, q'ad conu ceste reversion, autrefoitz supposa lui mesme estre hors del dreit de ceste revercion, en taunt com il suwy[6] d'avoir attournement de nous, si sanz moustrer title coment[7] le dreit puisse estre[8] affermé en la persone Johan, devoms estre chacé a moustrer[9] quel dreit nous clamoms.[10]

Malb. C'est un bref de jugement, par qei[11] vous estes garny a conustre quel dreit vous clamez en les terres continuz en[12] la note. Et a ceo qe vous estes garny covent[13] primes respoundre, qar cel[14] n'est mie[15] la nature del[16] *scire facias* qe dit 'si quid pro se habeat vel dicere sciat etc.' Par qei primes covent moustrer quel dreit[17] et pus dire par qei vous ne devez attourner, qar cesti[18] bref naturelment prent issue[19] par tel ordre de ley.[20]

Berr. Ele vous dit q'ele n'ad mestier a conustre etc.; qar[21] autrefoitz en court qe porte recorde Johan vostre conisour suwyt un *scire facias*[22] vers mesme ceste Alice d'avoir l'attournement et les services de la rose, et[23] par taunt supposa[24] qe le dreit de la reversion seit[25] devestue en[26] sa persone et q'il fut hors. Par qei, sanz ceo qe vous ne moustrez coment le dreit pus se vesti en la persone Johan, nous ne chaceroms jammès la femme a conustre quel dreit ele cleime etc.; qar si nous la chaceams[27] a ceo,[28] par taunt ensuereyt qe jammès ne convendreit autre bref avoir en nul cas qe cestui bref de jugement; qar par une conisance fet[29] entre ij persones[30] le *quid iuris clamat* serra[31] suy vers le tenant, qe[32] par cas ad le dreit; et s'il seit chacé a moustrer[33] quel dreit il ad sanz pleder al estat[34] le conisour, ja ne covendreit[35] bref de dreit ne nul autre bref d'autre nature vers lui; qe serroyt encontre[36] ley. Par qei vous affermerez l'estat[37] Johan einz ceo qe nous le[38] chaceroms a conustre[39] quel dreit etc.

[1] se *R.* [2] fit *R.* [3] prist *R*; prest etc. *P*, *Q*. [4] Johan la reversion *R*. [5] dieu *R*, *P*, *Q*. [6] sewit *R*; suist *P*; suy *Q*. [7] pus *R*. [8] dreit est *R*; dreit est puis *P*, *Q*. [9] conustre *R*, *P*. [10] conustre ou de atourner *P*, *Q*. [11] qel bref *R*. [12] dedens *R*. [13] *Ins.* il *R*, *P*. [14] cesti bref *R*. [15] pas de *R*. [16] d'un *R*. [17] *Ins.* etc. *R*, *P*. [18] le *R*. [19] se prent *P*. [20] play *Y*. [21] par *R*. [22] *Om.* un . . . facias *R*. [23] *Om.* et *M*. [24] *Ins.* il *R*. *P*. [25] fut *R*. [26] reversion se devesti hors de *P*. [27] chaceroms *R*; chasoms *P*; chacerioms *Y*. [28] *Ins.* la *R*. [29] *Ins.* ceynz *R*. [30] parties *P*. [31] clamat deit estre *P*. [32] qi *R*. [33] conustre *P*, *Q*. [34] pleder lestat *P*, *Q*. [35] *Ins.* porter *Q*. [36] contrarie de *R*. [37] par qei il covent mustrer lestat *Q*. [38] la *P*. [39] et conustr' *M*.

And she put forward a quitclaim which witnessed this. John said that by the quitclaim she could not be aided, for Richard his brother at the time when the quitclaim was made was seised in demesne. Alice said that [the quitclaim was made] in her seisin [and this she was] ready [to aver]. John [said] the contrary. Thereupon an inquest was joined. And we tell you that on the day when the inquest was returned John was nonsuited. Therefore it was awarded that Alice might take farewell without day. And since John, the conusor of this reversion, has on a former occasion supposed himself to be 'out' of the right of this reversion (insomuch that he sued to have an attornment from us), we demand judgment whether now we ought to be driven to show what right we claim, unless John shows some title by which the right has since then been affirmed in his person.

Malberthorpe. This is a judicial writ whereby you are warned to disclose what right you claim in the lands contained in the note [of the projected fine], and first you must answer what you have been warned to answer. For this writ is not of the nature of a *scire facias* which says 'if he has anything or can say anything etc.'[1] Wherefore first you must show what right [you claim], and after that you can say why you ought not to attorn. For the nature of this writ is such that it has its issue in this order of pleading.

Bereford, J. She tells you that she has no need to confess [her right], for heretofore, in a Court which bears record, John, your conusor, sued a *scire facias* against her to have her attornment and the service of the rose. By so doing he supposed that the right of the reversion was devested from his person and that he was [not 'in' but] 'out.' Unless, then, you show how the right afterwards was vested in the person of John, we will never drive this woman to confess what right she claims. For, were we to drive her to that, it would follow that there would be no necessity in any case for any writ other than this judicial writ; for a conusance would be made between two persons, and then a *quid iuris clamat* would be sued against the tenant, who, it may be, has the right, and then if he were driven to show what right he had, without there being any pleading about the estate of the conusor, why! there would be no need for any writ of right or any other writ of any kind against him; and this would be contrary to law. Therefore you must establish John's estate before we drive her to confess what right she claims, etc.

[1] The point seems to be that, whereas the *scire facias* is in form hypothetical (si quid pro se habeat et dicere sciat), the *quid iuris* contains a categorical command.

Malb. Johan[1] dit en éide de William qe son estat est affermé par my la fin en court qe porte recorde com[2] heir du sang, qe plus haut afferme son estat qe ne fet une[3] possession de[4] services; par quel fin ele[5] clame estat et la quele limite[6] son estat a terme de vie. Par qei il nous semble qe assez avoms affermé l'estat Johan. Estre ceo, l'estat qe Johan ad est affermé par my la fin com dreit[7] Richard et[8] plus[9] fort q'il ne serroit s'il fut estraunge purchaceour; qar meintenant après la mort Richard si pout[10] il avoir fet bone avowerie com dreit heir Richard sur Alice par vertue de la fin pur fealté et pur la rente de la rose arrere. Par qey etc.

Herle. A cele voie ne se preist[11] il pas; mès preist[12] un[13] autre voie com celui qe fit attorne[14] demander soun dreit par veie[15] de ley, com celui qe fut hors. Donqes plus naturelment ne put son estat estre trové[16] feble et[17] nul[18] qe par my sa conisance demene en court qe porte recorde. Et[19] del hure qe par sa conisaunce supposa[20] lui mesme estre hors com celui qe fut a demaunder son dreit, jugement, si avant ceo qu'il eyt tel dreit vers nous dereiné[21] ou puise[22] dire cum pus cele dreit[23] de la[24] reversion en sa persone soit affermé, eioms mestier a conustre.[25]

Wilb. Nous affermoms le dreit en la persone Johan par deux resons. Une est[26] qe le dreit fut conu a Richard nostre frere,[27] qi heir etc.,[28] par my ceste fyn, de qel dreit[29] unqes en sa vie ne se ousta, einz[30] continuaunt son estat morust seisi etc.; après qi mort de comune ley le dreit en la persone Johan com en le dreit heir de sang se vesti. L'autre reson est par my la fyn qe porte record qe le dreit en nous demoert com[31] heir Richard: par my[32] quele fin Alice clama[33] avoir estat, et la quele ad son estat taillé[34] a terme de vie a[35] tenir de dreits heirs Richard[36] par les services de une rose.[37] Et del hure qe le dreit descendit *immediate* a Johan com a heir de[38] sang[39] et ele clame[40] par my la fyn, la quele limite son estat a terme de vie a tenir de dreits heirs Richard, jugement.

[1] *Ins.* vous *R.* [2] *Ins.* dreit *R.* [3] la *P, Q.* [4] des *R, P.* [5] services par la fyn par la qele ele *Q.* [6] ly demit (?) *R*; *a blank in P*; emoit *Q.* [7] heir *R, P.* [8] est *P.* [9] Johan ad afferme par my la meyn W. com dreit heir Richard est plus *Q.* [10] poet *R.* [11] prist *R, P, Q.* [12] prist *R.* [13] une *R.* [14] qe fut attour a *R*; qe fut actour a *Y*; mes autre cum celi qe fut ajorne a *P*; *sim. Q.* [15] voie *R.* [16] prove *R.* [17] ou *P, Q.* [18] nully *R.* [19] *Om.* et *R.* [20] *Ins.* il *R, P.* [21] *Om.* dereine *M.* [22] prise *M.* [23] vers nous dereine ou coment pur ceo dreit *R*; qil eit soun dreit trie ou pus [puse *Q*] dire coment puis cel dreit *P*; *sim. Q*; dereigne vers nous et coment pus cel temps droit *Y.* [24] *Om.* la *R.* [25] *Add* etc. *R*; respoundre *Q.* [26] *Om.* est *R.* [27] feffor *P.* [28] *Om.* qi . . . etc. *P.* [29] *Om.* de . . . dreit *M, Q*; fyn, issint qe *P.* [30] *Ins.* en *P, Q.* [31] *Ins.* en le *R.* [32] *Om.* my *R, P.* [33] cleim' *R*; cleyme *P, Q.* [34] quele taille son estat *R.* [35] *Om.* a *R*; de sa vie a *Q.* [36] *End of speech Q.* [37] *Ins.* etc. *R.* [38] du *R.* [39] *Om.* de sang *P.* [40] cleyme estat *R.*

Malberthorpe. In aid of William, John says that his estate is established as heir of the blood by the fine levied [on the former occasion] in a Court which bears record:—an affirmance which is higher than any possession of the services would be.[1] And under the fine [it is that she] claims her estate, and it limits her estate to term of life. Thus it seems to us that we have sufficiently affirmed John's estate. Besides, the estate which John has is affirmed by the fine as the right heir of Richard, and more strongly than if he had been a strange purchaser; for, forthwith after the death of Richard, he, as Richard's heir, might by virtue of the fine have made a good avowry upon Alice for the fealty and for the arrears of the rent of the rose. Wherefore etc.

Herle. But he did not take that course. He took another course as being [not 'in'] but 'out,' and as a plaintiff demanding his right by action at law.[2] Nothing could show more naturally that his estate was feeble or null than this confession of his in a Court that bears record. And, since by his own confession he supposed that he was 'out' (as being one who was to demand his right), we pray judgment whether we need disclose our right until he has deraigned his right against us or has shown how since then the right has been affirmed in his person.

Willoughby. We are affirming the right to be in John's person, and this in two ways. First, by this fine the right was confessed to Richard our brother, whose heir [we are], and he never was ousted in his lifetime, but continued his estate and died seised etc.; and after his death, by common law, the right was vested in the person of John as the right heir of blood. Secondly, we rely on the fine, which bears record that the right abides in us as heir of Richard; and by this fine it is that Alice claims her estate, and it limits her estate to a term of life, to hold of the right heir of Richard by the service of a rose. And since the right descended immediately to John as heir of blood, and she claims under the fine, and it limits her estate to a term of life, to hold of the right heirs of Richard, we pray judgment.

[1] Or 'higher than would be any possession of the services under the fine by which she claims her estate.'

[2] If the right reading be 'qe fut attour a demander,' it may perhaps be a version or equivalent of the phrase 'avoir son ator de' (followed by an infinitive), which Godefroy (s. v. *ator*) gives as meaning 'être disposé, se préparer à . . .' Other readings are 'who made attorney' and 'who was adjourned.' The best reading of all seems 'qe fut actour,' though 'actour' for plaintiff is not common in our books.

Pass. Nous ne sumes pas ore[1] a nostre clamer, einz affermoms nostre r[eson][2] de ceo qe autrefoitz suscitastes[3] un *scire facias* de avoir le dreit de la reversioun, scil. de avoir les services et l'attornement Alice, en taunt supposastez vous mesmes estre hors, ou nous venimes[4] et clamames fee par my la quiteclamaunce Richard frere Johan, qi heir etc. Et del hure qe vous fustes par[5] comune ley hors etc. et par my vostre[6] r[espons][7] fustes[8] en taunt ousté,[9] com nous l'affermames[10] par la quiteclamaunce, jugement si par my vostre conisaunce[11] avant[12] qe vous eiez cel[13] dreit vers nous dereiné[14] devoms[15] conustre.[16]

Malb. Ceo qe fut en demande par le *scire facias* ne fut forsqe une possession de la rose. Unqore[17] le dreit de la reversioun lui demorra auxi avaunt com de pus[18] par vertue de la fyn com en le[19] dreit heir Richard.[20] Jugement, si ele[21] deit attourner. Estre ceo, si le[22] services Alice, des queux Johan supposa[23] lui mesme estre hors, fussent conuz et nous fussoms[24] ore a un *quid iuris clamat* ou il covent qe le dreit soit trié, par quei etc.[25]

Fris. Il se eident par un supposicion[26] qe nous fumes a[27] un *scire facias*; le quel, a ceo q'il supposent, preist[28] issue de[29] un nounsute; et[30] nous entendoms[31] qe bref qe conpreint[32] issue par nounsywte sanz ceo qe le jugement se taille[33] solonc[34] la nature del bref qe les parties demoerent[35] en l'estat ou il furent avant[36] le plee mewe.[37]

Herle. Vous deissez bien si jeo me eidasse et affermasse[38] mon estat par my[39] jugement. Mès nous pernoms a ceo qe vous demandastes vostre dreit par le *scire facias* en supposant vous mesmes estre hors de[40] dreit. Dont ja soit ceo[41] issint qe le jugement ne se tailla

[1] uncore *R.* [2] reson *R*, *Q.* [3] suffitastes *M*; portastes *R*; suscitastes *Q*; suystes par *Y.* [4] venimus *M*: veingnimes *Q.* [5] de *R.* [6] vostre *M*, *Q*: *perhaps* nostre *R*; *probably* nostre *P*; nostre *Y.* [7] reson *R*; *in M the word may be* respons *or* reversion, *but not* reson; *so in P*; respouns *Q.* [8] *Ins.* de dreit *R.* [9] fustes hors entaunt *P*; *om.* ouste *Q.* [10] supposames *P*, *Q.* [11] si par cel fyn *P*; *sim. Q.* [12] *Ins.* ceo *R.* [13] tiel *R.* [14] dreit en propre persone dereigne *P*; dreit dereignee par vostre persone *Q.* [15] pussez *M.* [16] devez estre r[espondu] *P.* [17] une possession des services scil. de la rose mes qil suppose lui meismes estre devestu de la possession de la rose uncore *Y.* [18] *Doubtful*, *M*; auxint bien puis cum avaunt *P*; auxi bien puis com avant *Q.* [19] com au *R.* [20] *Om.* com . . . Ric. *P*, *Q.* [21] *Ins.* ne *P.* [22] les *R.* [23] jeo supp' *M.* [24] conuz et furems *R.* [25] a un per que servicia la par cas ley ne schachereyt mye la femme datourner, mes des services il ny ad rien en debate eynz sumes en un quid iuris clamat ou il covent qe le dreit seit conu ou dedit. *R. Sim. Y. Omit last sentence of this speech*, *P*, *Q.* [26] possession *Q.* [27] par une confessioun qe nous feymes en *P.* [28] prist *R*, *P*, *Q.* [29] par *R*, *P*, *Q.* [30] par qei *P.* [31] et nentendoms pas *Q.* [32] qe non obstante le bref qe puist *P*; qe par vostre bref qe prent *Q.* [33] le jug. ne se ust taille *P*; tailla *Q.* [34] sur *P*, *Q.* [35] demourgent *P.* [36] l'estat qe avaunt furent avaunt *R.* [37] meu, jugement, *R*; mu *P*; meu *Q.* [38] affornace *R.* [39] *Ins.* le *R*; *om.* my *P*, *Q.* [40] del *P*; du *Q.* [41] Dount mesqe ceo soit *P.*

Passeley. We are not yet making our claim; we are affirming our reasoning to the effect that before now you sued a *scire facias* in order to obtain the right of the reversion—that is, to have Alice's services and attornment—and in so doing you supposed yourself to be 'out,' and we came and claimed the fee by virtue of the quitclaim of Richard, brother of John, whose heir [John is]. And since by the common law you were 'out' etc., and by our answer you were ousted,[1] as we affirmed, by the quitclaim, we demand judgment whether by reason of this conusance of yours[2] we ought to declare [our right][3] until you have deraigned this right against us.

Malberthorpe. What was in demand by the *scire facias* was only a possession of the services, to wit of the rose; and, although he supposed himself devested of the possession of the rose, the right of the reversion still remained, afterwards as before, in him [John] by virtue of the fine as in the right heir of Richard. We pray judgment whether she ought not to attorn. True that if Alice's services, in relation to which John supposed himself to be 'out,' had been the subject of this conusance, and we were now in a *per quae servicia*, then, it may be, the law would not drive her to attorn; but as to the services there is no debate in the present case, for we are now in a *quid iuris clamat* where it is necessary that the right should be confessed or denied.[4] Wherefore etc.

Friskeney. They are aiding themselves by the confession that we made in the *scire facias* which (so they suppose) ended in a nonsuit. Now, according to our thinking, when a writ ends in a nonsuit without any judgment being fashioned according to the nature of the writ, then in that case the parties remain in the condition in which they were before the plea was moved.[5]

Herle. What you say would be very true if I were aiding myself and affirming my estate by a judgment; but the point to which we are betaking ourselves is that you demanded your right in the *scire facias*, and in so doing you admitted that you were 'out' of the right. So let it be that in the *scire facias* no judgment was given according

[1] Or perhaps 'and by your own reasoning you were ousted.'

[2] That is, the fine which is now being levied.

[3] Or 'you ought to be answered.'

[4] A large portion of this argument is omitted in some of our books. See the variants on the opposite page. But the contrast between the *quid iuris clamat* and the *per quae servicia* seems an important part of the argument.

[5] The detail of the text is somewhat dubious.

point sur la nature del bref, unqore averai jeo recorde de ceo qe vous supposastes [1] estre hors [2] par my le bref etc.[3]

Malb. Homme purra en [4] cas granter le dreit de [5] ceo qe n'est pas en sa persone [6] vestue ne seisi.[7]

Ber. Après la mort mon auncestre granterai jeo [8] les services le [9] tenant, qe ne se attourna unqes a moy ne de sa foialté ne de ses services, par fyn en la court ? [10] Quidez vous qe ley le chacera [11] de attourner par mon grant qe fut hors [12] avant ceo qe j'ay [13] derreyné les services ? Noun fray.[14] Par qei vous moustrerez qe J. fut einz avant [15] qe nous le [16] chaceoms [17] a conustre quel dreit [18] etc.

Herle ad alium diem recitavit raciones,[19] et demanda jugement. Estre ceo il mist avant la quiteclamance et demanda jugement.

Fris. Par cele acquitance [20] ne devez [21] estre eydé ; qar en temps qaunt l'acquitance [22] fut fet, vous n'avez [23] rien en ceux tenemenz.[24] Jugement, si par my cele fet,[25] qe voide est, pussez nul dreit en vostre persone affermer.

Herle. A ceo ne avendrez mye ; qar, si la quiteclamance eust esté fet pus la conisance fet a vous, poit [26] estre qe vous la voiderez [27] par tiele voie en affermaunt le dreit q'est a vous conu ; mès ore mettoms avant le fet l'auncestre celui qe vous fit cele conisance, q'est de eisné temps qe ne soit [28] la conisance, a quele [29] trier vous ne poiez estre partie avant [30] qe J. eit tiel [31] dreit par autre voye de ley derreigné. Par quei etc.

Fris.[32] Si jeo ne soi receu a cel acquitance [33] voider en la manere,[34] ensywereit qe ja [35] nul conisance ne [36] prendreit effect [37] en ceste court ; qar a dire tauntsoulement qe le dreit vous est relessé par celui qe conust ou [38] son auncestre, vous irrez [39] quit [40] del attournement ; et issint par une voider [41] de fet [42] affermerez le dreit estre le vostre, qe serroit encontre ley.

Ber. Pur qi donetz ceo response a voider le [43] fet ? Ou pur Johan qe conust, ou pur William a qi la conisance est fet ?

[1] *Ins.* vous meme *P.* [2] *Ins.* del dreit *P.* [3] *Ins.* par qey *R* ; qe vous estes hors par my bref *Q.* [4] *Ins.* chescun *Y.* [5] *Om.* dreit de *P.* [6] possession *R.* [7] vestu par seisine *R* ; vesti ne seisi *P.* [8] jeo graunt *P* ; *sim. Q* ; *om. both words M.* [9] moun *P*, *Q.* [10] *Om.* ne . . . court *P.* [11] qe jeo ly chacerey *P.* [12] *Om.* qe fut hors *Q.* [13] jeo ai *R* ; jeo ey *P.* [14] fra *Q.* [15] *Ins.* ceo *P*, *Q.* [16] la *P.* [17] chaceroms *R*, *P*, *Q.* [18] *Om.* quel dreit *P*, *Q.* [19] *Ins.* predictas *R* ; recitavit etc. *P* ; recitavit ut supra *Q.* [20] quiteclame *R.* [21] ne put ele *R.* [22] la quiteclame *R* ; la fyn *Q.* [23] naviet *R* ; naveytes *P* ; navietz *Q.* [24] *Ins.* prest etc. *P.* [25] quiteclame *R.* [26] put *R*, *P* ; peut *Q.* [27] vodrez *R* ; avendrez *P* ; voudriez *Y* ; qe vous vendreetz *Q.* [28] qe nest *P* ; qe ne fust *Q.* [29] quel fet *R.* [30] *Ins.* ceo *P*, *Q.* [31] ceu *R* ; cel *P* ; son *Q.* [32] Malm. *P*, *Q.* [33] cele quiteclame *R.* [34] *Om.* en . . . manere *P*, *Q.* [35] jammes *R*, *P*, *Q.* [36] *Om.* ne *R*, *P.* [37] effet *R.* [38] H *or* heir *R* ; *ins.* par *P*, *Q.* [39] irrietz *P.* [40] quites *R*, *Q* ; quitez *P.* [41] vey *R.* [42] defet *M* ; par un fet voide *P* ; *sim. Q*, *Y.* [43] en voidaunce du *R.*

to the nature of the writ, still I can claim record of the fact that by the writ you supposed that you were 'out' etc.

Malberthorpe. There are cases in which a man can grant a right which is not vested in his person by seisin.[1]

Bereford, J. After the death of my ancestor can I by a fine in court grant the services of a tenant who has never attorned to me either for his fealty or for his services? Do you think that, on a grant made by me while I was 'out' and before I had deraigned the services, the law would drive the tenant to attorn? It shall not be. Therefore you must show that John was 'in' before we drive [Alice] to say what right she claims.

On another day *Herle* recapitulated the reasoning and thereon demanded judgment. Moreover, he produced the quitclaim and demanded judgment.

Friskeney. This quitclaim will not help you, for when it was made you had nothing in those tenements.[2] Judgment, whether by that void deed you can affirm a right in your person.

Herle. To that you cannot get, for if the quitclaim had been made after the making of [this present] conusance to you, possibly you would be able to avoid it[3] in the way that you are trying to do, by affirming the right confessed to you by the conusance; but here we are putting forward a deed of your conusor's ancestor which is of earlier date than the conusance, and to try its validity you can be no party until John has deraigned this right of his by some other legal method. Wherefore etc.

Friskeney. If I am not received to avoid this quitclaim in this manner, it will follow that no conusance will be of any effect in this court; for on your mere assertion that the right has been released to you by the conusor or his ancestor you will go quit of the attornment, and thus by a void deed you will affirm the right to be yours, and that would be contrary to law.

Bereford, J. On whose behalf do you give that answer: for John the conusor or for William the conusee?

[1] Or 'which is not vested by seisin in his possession.' One book says that a man may do this 'in every case': not merely in some cases.

[2] According to the best statement that we have of the fine, it did not give any estate to Alice except after Richard's death. How it came about that she was seised when Richard made the release to her, we are not told.

[3] This seems the best of the different readings.

Malb. Nous le dioms [1] pur Johan qe conust.

Berr. Il [2] ne put rien dire ne fere, qar il se ad demys del dreit [3] qauntqe en lui est [4] par sa conisance demene.

Malb. Dont le dioms [5] pur William [6] si la court le poet [7] soeffrir. Vous avez cy Johan qe se joynt a William en eyde a parfournir la conisance q'il ad fet en ceste court qe vous dounent mesme le respons.[8]

Berr. Si vous [9] donez pur William,[10] unqore [11] dit il qe a sa sute ne deit il conustre quel dreit [12]; qar Johan qe vous conust [13] unqes de cel dreit ne [14] fut [15] seisi.[16] Estre ceo, il prova lui mesme estre hors del [17] dreit,[18] entaunt com il siwyt par le *scire facias* d'avoir l'attournement q'est [19] la cause de dreit de ceste r[evercion] de service.[20] Dont mult plus feble fut l'estat Johan avant la conisance fet [21] qaunt a dire [22] si Alice [23] eust tenu en dowere ou un tenant les eust tenu par la ley d'Engleterre, la ou de comune dreit le dreit de [24] la reversion append [25] a lui. Outre ceo, vous dit ele qe Richard de Merton frere Johan, qi heir etc., relessa etc. et [26] ad quitecl[amé] simplement [27] par ceo fet qe ceo tesmoigne. Par qei, avant qe le dreit soit derreigné par autre voie de ley, a la sute William ne deit ele conustre quel dreit etc.; qar, si ele par force de court [28] fut chacé a conustre,[29] ja [30] ne [31] convendreit autre bref [32] vers le [33] tenant qe ceo bref de jugement; qe serroit encontre ley etc.

Malb. Johan qe conust avoit [34] par vertue de la fyn [35] pur ceo q'il est heir [36] Richard, issint qe [37] meintenant après sa mort le fee et le dreit se vesti [38] en sa persone. Jugement etc.

Ber. Vous supposastes vous mesme estre hors de la reversion par vostre bref que vous portastes.[39] Par qei, einz ceo qe Johan eit derreigné l'attournement vers lui, n'entendoms mie q'il [40] eit [41] mestier a conustre quel dreit [42]; qar, si vous pussez [43] par ceste bref de jugement trier [44] l'estat Alice, si plederez vous auxi en cesti bref com en un [45] bref de dreit, et si abaterez [46] vous les [47] brefs de mort-

[1] donoms *R.* [2] J[ohan] *R.* [3] demis du bref *R*; il sen est ouste de net de droit *Y.* *Ins.* et *M.* [4] demys de qauntqe en li fut *P.* [5] devoms *R.* [6] *Ins.* et *R*; pur J. *Q.* [7] court puisse *R.* [8] suffryr qe J. se joynt ovesqe Will. *P.* [9] *Ins.* le *R.* [10] *Om.* si . . . William *P.* [11] *Ins.* vous *R.* [12] *Ins.* etc. *R*, *P.* [13] *Ins.* etc. *R*; qar qaunt vous conustes *P.* [14] *Om.* ne *P.* [15] futes *P.* [16] vestuz e seisi *R.* [17] de *R.* [18] *Om.* del dreit *P*, *Q.* [19] *Om.* lattournement qest *R.* [20] revercion c'est a savoir l'atournement des services *R.* [21] *Om.* fet *R.* [22] qaunt a dreit qe ne serreit *R*; Johan qe *Q.* [23] *Ins.* ne *M.* [24] *Om.* le dreit de *R*, *P.* [25] apendist *R.* [26] *Om.* de . . . et *P.* [27] *Om.* simplement *P*; quitecl[ame] simple *R.* [28] *Om.* par . . . court *R*, *P*, *Q.* [29] mustrer etc. *R.* [30] jamnies *P.* [31] *Om.* ne *Q.* [32] *Ins.* porter *R*; avoir *P*, *Q.* [33] nul *P.* [34] *Ins.* dreit *P*, *Q.* [35] *Ins.* etc. *R.* [36] fyn auxint come heir *Q.* [37] *Om.* qe *P.* [38] vestirent *P.* [39] estre hors qaunt vous suistes le scire facias *P*, *Q.* [40] qe ele *P*, *Q.* [41] vers ly ele nad *R.* [42] *Ins.* etc. *R*, *P*, *Q.* [43] porrez *R.* [44] pleder *P*, *Q.* [45] son *R.* [46] abateriez *R.* [47] le *M.*

Malberthorpe. We give it for John the conusor.

Bereford, J. But he can say nothing and can do nothing, for by his own conusance he has, so far as in him lay, demitted himself from the right.[1]

Malberthorpe. Then we give it for William, and, if the Court will allow us, for John. Here, then, you have John who joins in aid with William for the perfecting of the conusance that he [John] has made in this court: and they give you the aforesaid answer.

Bereford, J. Still, if you give it for William, [Alice's] reply is that at his suit she need not discover her right, for John your conusor was never seised of the right. Besides, he proved himself to be 'out of the right of this reversion when he sued the *scire facias* to have [Alice's] attornment and services, they being the cause of that right of reversion. So the right of John before he made the conusance was much feebler in law than it would have been if Alice had been tenant in dower or if there had been a tenant by the curtesy, for in those cases there is a right of reversion by the common law [without attornment or service]. Furthermore, she tells you that Richard of Merton, brother of John, whose heir [John is], released and has made a simple quitclaim to her by a deed which testifies this. Therefore, until the right is deraigned by some other legal process, [Alice]' has no need to confess at William's suit what right she claims; for if she were driven to a confession by the power of the court, then there would be no need of any writ against a tenant except this judicial writ, and that would be against law etc.

Malberthorpe. John, the conusor [in the present case], had [the right] by virtue of the fine as being Richard's heir, so that forthwith after [Richard's] death the fee and the right were vested in [John's] person.

Bereford, J. But by the writ [of *scire facias*] that you brought you supposed yourself to be 'out' of the reversion. Therefore, until John has deraigned the attornment to him, we do not think that [Alice] has any need to discover what right she claims; for if in this judicial writ you could try Alice's estate, you would be pleading in this writ as if it were a writ of right[2]; and in that way you would

[1] In the proceedings instituted by the judicial writ *quid iuris clamat* the conusee is in effect the demandant. It is he who desires the tenant's attornment.

[2] Thus by a collusive fine and a judicial writ you might force the person who is seised to disclose his title while you only produced the fine.

dauncestre et de ael et de cosinage et le bref de dreit[1]; q'est[2] inconvenient. Estre ceo, si nul fet fut mis avant qe fut fet pus la conisance, a ceo[3] serreit[4] bien partie et[5] noun de plus haut temps.

Wilb. Il y ad fealté qe est prove de attournement en cas qaunt homme deit attourner par vertue de[6] conisance fet en la court le Roy de sa fealté et noun pas de autre[7] service, et il y ad fealté q'est prove des services en cas qaunt homme attourne de fealté en conisance de autre service.[8] Par qei, tut soit il seisi[9] de la rose contenu en la fyn, si fut[10] la reversion de dreit a lui[11] par vertue de la fyn etc.

Et sic adiornantur in proximo parliamento.[12]

{*Malb.*[13] Par la mort Richard se vesti le dreit en Jon par la fin, par quel ele ad estat; et coment q'il porta *scire facias* et fu nounsiwy, uncor pot il après avoir destreint pur les services, com celi en qi le dreit demoura. Et la lai est altre vers li qi est heir qe devers estrange porchaceour. Et, tut demanda il la possession de services, ceo ne li mette pas hors de dreit de la reversion.

Ber. Si ele fu chacé a clamer par grant celi qe se suppose hors, donqes ensuereyt qe homme poeit granter dreit en action.}

{*Frisq.*[14] Ceste reversion ou il est pery, ou il demoert en ascone persone. Mès en autre persone ne puet demorer mès en la persone Johan, car il est droit heir Richard etc. Ergo etc. Et d'autrepart, Richard tient ces tenemenz a tote sa vie, issi qe ele ne oust nul estat en la vie Richard. Et demandoms jugement si la quiteclamance a luy deit valer. Et si ele voet dedire, prest etc.

Scrop. A ceo qe vous chasez a oustier nous de ceste reversion par la r[eson] qe Johan suyt altrefoiz pur avoir l'atturnement de la rente en supposant etc., ceo nous ne deit grever car a demander services ceo est[15] une manere de plee, et a demander reversion ceo est une altre etc. Par qei etc.

Touth. Seisine des services si est atturnement del dem[eine] en tieu cas. Et d'autrepart, qaunt Johan se fist partie a nous sur la

[1] *Ins.* et touz les autres brefs *P*; ael et touz les autres brefs *Q*. [2] qe serroit *P*, *Q*. [3] *Ins.* trier *P*. [4] serriez *R*, *P*; serreietz *Q*. [5] mes *R*, *P*, *Q*. [6] dune *R*. [7] et nyent autre *Q*. [8] *Om.* et il . . . service *P Q*. [9] tut nust il la seisine *R*; tust ne seit il seisi *Q*. [10] *Ins.* le dreit de *P*, *Q*. [11] revercioune a le de terre *R*. [12] This clause in *P*, *Q*, *X*. [13] From *X*, a brief version of the case. [14] What follows comes from *Y*. [15] *Om.* est *Y*.

abolish the writs of mort d'ancestor, ael and cosinage, and the writ of right and all other writs; which is absurd. If indeed a deed were put forward which was made after [this present] conusance, then you might be a party [to try that deed]; but you cannot [try in these proceedings] a deed of earlier date [than the conusance].

Willoughby. There are cases in which fealty is proof of attornment, as when by virtue of a conusance made in the King's Court a man has to attorn for his fealty and not for any other services; and there are cases in which fealty is a proof of services, as when a man attorns for fealty in confession of other service. Therefore, albeit he had no seisin of the rose contained in the fine, still by virtue of the fine the reversion of the right was in him.

And so they were adjourned to the next parliament.

{*Malberthorpe.*[1] On Richard's death the right became vested in John by the fine which gives [Alice] her estate; and although he brought a *scire facias* and was nonsuited, still after that he might have distrained for the services as being the person in whom the right abode. And the law is different in his case from what it would be in the case of a purchasing stranger. And, albeit he brought a writ to obtain possession of the services, that does not put him 'out' of the right of the reversion.

Bereford, J. If she were compelled to make a claim upon the grant of one who by his own supposition was 'out,' it would follow that one could grant a right in action.}

{*Friskeney.*[2] Either this reversion has perished or else it remains in somebody's person. But John's is the only person in whom it can remain, for he is Richard's right heir. Therefore etc. Besides, Richard held these tenements for the whole of his life, so [Alice] had no estate while he lived. We pray judgment whether the quitclaim can avail her. If she will deny, ready etc.

Scrope. As to your attempt to oust us from the reversion by the argument that John on another occasion sued to have an attornment of the rent and so supposed [himself 'out' of the reversion], that ought not to hurt us, for to demand services is one kind of plea, and to demand a reversion is another. Therefore etc.

Toudeby. In such a case seisin of the services is an attornment of the demesne. Besides, when John made himself a party with us

[1] This passage is taken from a much abbreviated report. We give it because it forcibly illustrates the inalienability of the right of action.

[2] In one MS. Bereford adjourns the parties for judgment to Michaelmas quindene. At that day Friskeney and Herle rehearse the previous pleadings. Then the following takes the place of the last six paragraphs printed above.

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quiteclamance, qe fut regardant le dem[eine], en tant suppose il estre hors de la reversion. Et demandoms jugement si la conissance Johan nous deive fere atturner avant qe la reversion et les autres services qe sount cause de atturnement soient dereigneez.

Bereford. Si Alice se atturnast a W. par tiele conissance, il n'y avereit jammès mestier de bref de droit ne d'altre mès cestui *quid iuris etc.* Et pur ceo qe les noveles ordinances velint qe si justices soient en ewer de lour jugement, qe la parole soit mis en parlement,[1] pur ceo suyez au parlement. Et dona[2] les jour en dementers leindemein de la Purificacion etc.

Note from the Record.

A copy of a certain part of the record is given by MS. *Y*, f. 199b. It there appears that a certain Alice is called upon to say *quid iuris clamat* in certain tenements. She says 'right, fee and freehold.' Upon this William and John (their surnames are not given) say that she cannot claim right or fee, for a fine was levied before J. of Metingham and his fellows in 22 Edward I. between Richard of Merton, John's brother (whose heir John is), as plaintiff, and Alice as deforciant, and thereby Alice confessed a moiety of the said tenements to be the right of Richard and rendered it to him, to hold to him and his heirs for ever of the chief lords by the services thereto belonging (with clause of warranty), and Richard granted that if he died in Alice's lifetime, then after his death that moiety together with the other moiety and certain other tenements in the same vills should remain to Alice, to hold to her for life of Richard's heirs by rendering yearly a rose (with clause of warranty), and after her death the said tenements should revert to Richard's heirs. And William and John further say that Richard died seised in his demesne as of fee and right by the force and effect of the fine, and that on his death Alice entered according to the form of the fine. And they demand judgment whether, against the tenor of the fine, she can claim any other estate than freehold.

Alice confesses the fine, but says that afterwards during Richard's life, the tenements being in her seisin, Richard by his writing quitclaimed to her the whole tenement that he had by her gift and feoffment at Werham in the parish of Stertfolde Turgis and all right that he had or might have in the same. This writing she produces. She further says that the tenements, the reversion of which John has granted to William, are comprised in this writing. She adds that in 31 Edward I. John caused the transcript of the foot of this fine to come before Roger Brabanzoun [in the King's Bench], whereupon the sheriff was directed to do her to wit (*scire faceret*) that she must come before the King to show whether she had anything to say why the fine should not hold good (*tenere*) in all its articles; and that John and she appeared; and that John claimed that she should recognise the service

[1] *Ins.* et *Y.* [2] donez *Y.*

[by pleading] about the quitclaim, which quitclaim concerned the demesne, he thereby supposes himself 'out' of the reversion. We demand judgment whether this conusance now made by John can force us to attorn before the reversion and the other services which are cause for an attornment have been deraigned.

Bereford, J. If Alice attorned to William on this conusance, there would never be any need for a writ of right or any writ other than this *quid iuris clamat*. And because the new Ordinances[1] direct that when the Justices are in doubt about their judgment the cause shall be sent into Parliament, to Parliament you must sue. And in the meantime he gave them a day on the morrow of the Purification etc.}

Note from the Record (*continued*).

of the rose and attorn to him as to Richard's heir by reason of the reversion and do him fealty; and that she then said that the reversion did not belong to him, and that she was not bound to him in any service, since after the levying o the fine she was in seisin, and in her seisin Richard quitclaimed by the said writing, which she then produced; and that John confessed the writing to be Richard's, but said that at the time when it was made she was not in seisin; and that on this he and she were at issue; and that afterwards he did not prosecute, so that she went without day. Alice finishes her plea by demanding judgment whether she ought to attorn to William on this grant of a reversion, since John sued in a court of record to demand execution of the fine and to have fealty and services of the said tenements (thereby supposing that he was not vested with the right of the reversion) and since it cannot be shown that Alice afterwards attorned.

Then William and John say that Alice cannot thus devolve herself from the duty of attorning to William, for they say that at the time of the making of the writing [*i.e.* Richard's release] she was not seised, and this they are ready to verify as the court shall award. They add that, by the force of the fine, immediately upon Richard's death the right of the reversion remained in John's person without any attornment being had of Alice's fealty and services. And they demand judgment whether by the process of the plea before the King, which plea came to no final issue (*nullum finalem exitum sortiebatur*) they are to be precluded.

Alice replies that the averment offered by William and John that she was not seised is not to be admitted, especially as the said writing is the deed of John's brother Richard, so that John cannot without original writ deraign against Alice the reversion of the tenements, even if he have any right therein. So she demands judgment as before.

'And a day is given to hear judgment on the morrow of the Souls.'

[1] Apparently a reference to cap. 29 of the Ordinances of 1311: see Statutes, vol. i. p. 165, and Rolls of Parliament, vol. i. p. 285. None the less, the case may have been first argued in the second year of the reign.

129. HALSTEDE *v.* GRAVASHALE.[1]

Cosinage, ou le tenaunt dit q'il fut entré com fiz et heir : et la verité fut q'il fut engendré d'un homme, et sa mere prist autre baroun, issi q'il fut nee deynz le moys après les secundes esposailes. *Quere* s'il serra heir.

Thomas le fitz Johan de Halstede porta son bref de cosinage vers J. le fitz J. de Tramesle[2] et demanda certein tenemenz de la seisine un Johan,[3] qe de ceo morust seisi. De J., purceo q'il morust sanz heir de son corps, resorti le fee et le demene a T. com a uncle et heir, friere R.[4] piere J. de T. A Agnes com a seor etc. et de Agnes a T. q'ore demande.[5]

Malb. La ou il demandent ceux tenemenz et pernent lour title de la seisine un J. et dient qe de celui J., purceo q'il[6] etc., resorti le fee etc. a Thomas com a uncle, frere Richard, piere etc., la dioms nous qe nous sumes le fitz mesme cesti Johan, q'il suppose[7] devier sanz heir de son corps, nee et engendré deinz les esposailles, et einz sumes com heir. Jugement, si vers nous rien pussez demander.

Pass. Qe J. morust sanz heir de son corps, prest etc.

Ber. Qei r[esponez] vous a ceo q'il dient q'il est fitz mesme celui[8] nee et engendree dedeinz les esposailes et einz est com heir J. ?

Pass. Il n'est pas le fitz J., prest etc.

Malb. Qi fitz est il ? Dont[9] il covent qe vous lui donez autre piere.

Herle. Il est fitz W. Colman,[10] prest etc.

Malb. Ceo ne poiez dire, qe nous sumes fitz mesme cesti J. nee et engendré deinz[11] les esposailles de Johane nostre miere. Jugement, si autre piere nous pussez[12] doner.

Herle. Nous sumes a issue de plè. Q'il est fitz W. Colman nee et engendré hors de les esposailles, prest etc.

Fris. Vous dirrez de quele femme nee et engendré hors de les esposailles,[13] qar par vostre bref demene vous nous festes le fitz Johane nostre miere. Et ovesqe ceo nous vous dioms qe nous sumes[14] fitz J., nee[15] entre lui[16] et Johane. Jugement si a tiel averrement devez estre receu sanz ceo qe vous diez de quele femme nee et

[1] Not in *Vulg.* Text from *M*: compared with *R*, *P*, *L*, *Q*. Headnote from *Q*. [2] *First letters doubtful*, *M*; Trameshale *R*; J. de T. *P*; Johan de Graham *L*. [3] *Ins.* son cosyn *P*. [4] Ric. *R*. [5] A shorter statement of facts, *L*, *Q*. [6] J. morust *R*. [7] supposent *R*. [8] fitz J. *R*; mesme cestuy J. *P*. [9] il dount qar *R*. [10] Coleman *R*. [11] de *R*. [12] poet *R*. [13] *Om.* nee . . . esposailles *P*, *Q*. [14] *Ins.* le *R*. [15] *Ins.* etc. *R*. [16] J. *R*.

129. HALSTEDE *v.* GRAVASHALE.[1]

As against one who is 'in' as son and heir of *X*, it is not sufficient to allege that he is the son, not of *X*, but of another man, without adding that he was born 'outside' the marriage between *X* and *X's* wife.

Thomas, son of John of Halstede, brought his writ of cosinage against John, son of Joan of Gravashale, and demanded certain tenements on the seisin of one John who died seised thereof. And from John, because he died without an heir of his body, the fee and demesne resorted to an uncle and [thence descended to the demandant].[2]

Malberthorpe. Whereas they demand these tenements and take their title from the seisin of John and say that from him, since he died [without heir of his body], the fee resorted to his uncle, we tell you that of this same J[ohn] whom they suppose to die without heir of his body, we are the son born and begotten in wedlock, and we are 'in' as heir. Judgment, whether you can claim anything.

Passeley. John died without an heir of his body. Ready etc.

Bereford, J. What say you to the assertion that he is John's son, born and begotten in wedlock, and that he is 'in' as John's heir?

Passeley. Not the son of John. Ready etc.

Malberthorpe. Whose son then? You must give him another father.

Herle. Son of William Coleman. Ready etc.

Malberthorpe. That you cannot say, for we are son of this same John, born and begotten in wedlock with Joan our mother. Judgment, whether you can give us another father.

Herle. We have come to the issue of this plea. Ready [we are to aver] that he is the son of William Coleman, born and begotten out of wedlock.

Friskeney. You must say of what woman he was born and begotten out of wedlock, for by your own writ you have made us son of Joan our mother. And we add that we are the son of John, born between him and Joan. Judgment, whether to such an averment [as yours] you ought to be received without your saying of what woman

[1] Proper names from the record. This case is Fitz., *Bastardy*, 22.

[2] The reported count simplifies the pedigree.

engendree hors de les esposailles. Et si vous volet dire qe nous sumes le fitz W. Coleman nee et engendré hors des esposailes[1] entre J. nostre piere et Johane nostre miere, dites le, et si serroms nous tost a issue de plè.

Herle. Ceo[2] n'avoms mestier, qar vous nous biez forsclore par une excepcion qe se[3] lie[4] sur ij. pointz, qe la ou nous dioms qe J., de qi seisine nous demandoms, morust sanz heir de son corps par qei le fee et le demene resorti a T. com a uncle et heir,[5] la dites vous qe vous estes le fitz J. nee et engendree deinz les esposailles.[6] Au primer poynt r[esponoms] nous[7] qe vous n'estes[8] mie le fitz Johan, einz le fitz William Colman. Et la ou vous dites outre nee et engendree deinz les esposailles, nous dioms qe hors de chescun manere des esposailles, prest. Et issi sumes a contrarie. Jugement.

Ber. Ceo n'est[9] mie pleinement contrarie sur ceo q'il dient[10]; qar ils vous surmettent q'il est fitz J., de qi seisine vous demandez, nee et engendree deinz les esposailles entre J. et Johane sa miere. Par qei sanz ceo qe vous ne lui donez autre miere et seez[11] auxi pleinement a la negative com il vous dounent par r[esponse], nous[12] ne resceiveroms par la mise.

Herle. A pleder sur ceo estre[13] le fitz J.,[14] a qi nous sumes tut estraunge et[15] rien a lui ne fesoms[16] privé, ne avoms mestier. Dont jeo n'ay veu ne après ne verray[17] qe si jeo demaundasse de la seisine mon auncestre par bref de possession, et le estre[18] un estraunge, a qi jeo ne[19] su[20] privé de[21] sang, soit alleggé countre moy, qe ley me chacera[22] mye a pleder a son nestre.[23] Et si celui qe[24] afferme son estat et cleime par my celui, tel clame ne me trovera[25] en desavauntage, qar assez me suffit de[26] maintenir ma accion solonc la nature de mon bref. Et del hure qe nous voloms averrer qe celui Johan est le fitz W. Colman et nent le fitz J. de T.[27] nee etc. hors des esposailes, coment q'il parle outre et dit q'il est le fitz Johane sa miere, q'est estrange a nous, a ceo n'avoms mestier a respondre.

Berr. Jeo vy J. de Lodelowe q'esposa une femme qe fut gros enceynte et fut delivers[28] deinz le moys,[29] et après le moys[30] fut il

[1] *Om.* Et si . . . esposailes *M*, *P*, *Q*. [2] A ceo *P*, *Q*. [3] nous *R*. [4] *Ins.* etc. *R*. [5] *Ins.* etc. *R*; *om.* par . . . heir *P*, *Q*. [6] *Ins.* la demand' jugement del primer point et demand' jugement *M*. [7] esposailles au premer poynte et nous dioms *Q*. [8] nest *Q*. [9] Vous mettes (?) *for* vous n'i estes (?) *R*. [10] *Om.* sur . . . dient *P*, *Q*. [11] seiez *R*; soiez *P*; seietz *Q*. [12] nous *R*, *P*, *Q*.; ou *M*. [13] lestre, *R*. [14] Johane, *R*; a pleder sur cel qil est le fiz Johane *P*, *Q*. [15] ne *P*, *Q*. [16] foums (?) *R*. [17] *Om.* dont . . . verray *Q*. [18] et lestre *R*; le vestyr *P*; le neestre *Q*. [19] *Om.* ne *M*. [20] suy de rien *R*. [21] du *R*. [22] chacerai *R*. [23] estre *R*, *Q*; vestir *P*. [24] qest eynz *R*; qad *P*. [25] *Ins.* mye *R*. [26] a *R*, *P*, *Q*. [27] *Om. to after* Lodelowe *in next speech*, *M*, *P*, *Q*. [28] delivere *P*. [29] *Ins.* apres, *R*, *P*; apres etc. *Q*. [30] apres la mort Johan *R*.

we were born and begotten out of wedlock. And if you wish to say that we are the son of William Coleman, born and begotten outside the wedlock between John our father and Joan our mother, say that, and we shall soon be at the issue of the plea.

Herle. We have no need to do that, for you are trying to foreclose us by a special plea which is laid at two points. First, whereas we say that John, upon whose seisin we demand, died without an heir of his body, whereby the fee and demesne resorted to his uncle as heir, there you say that you are the son of John, born and begotten in wedlock, and in answer we say that you are the son, not of John, but of William Coleman. Then [secondly] you say that you were born within the wedlock [between John and Joan], and we say (and are ready to aver) that you were born outside wedlock of any kind. So we are directly at issue. Judgment.[1]

Bereford, J. That is not a clean contradiction of what they said. For they surmise that [the tenant] is the son of John, on whose seisin you demand, born and begotten within the marriage between John and Joan [the tenant's] mother. So, unless you give him another mother and make your negative as large as the proposition offered by them in their answer, we shall not receive the mise.

Herle. We have no need to plead about his being the son of Joan, to whom we are a total stranger and to whom we in no wise make ourselves privy. If I demand upon the seisin of my ancestor by a possessory writ and the birth of a stranger to whom I am in no wise privy in blood is alleged against me—never have I seen and never shall I see that the law in such a case will force me to plead about his birth. And if he who is 'in' affirms his estate and claims through such [a stranger], such claim will not find me at a disadvantage, for it is enough for me to maintain my action according to the nature of my writ. And since we are willing to aver that [the tenant] is the son of William Coleman, and not the son of John, but born and begotten out of wedlock, we have no need to answer him although he goes on to say that he is the son of Joan his mother, who is a stranger to us.

Bereford, J. I saw [the case of] John of Ludlow, who espoused a woman who was big with child, and within a month afterwards she was delivered, and after John's death the issue was held heir of both

[1] If the fact was that the tenant was the son of Joan by William Coleman, but born during the marriage between John and Joan, the jurors might perhaps find that he was born 'outside wedlock,' whereas they might not find that he was born 'outside the wedlock between John and Joan.' This is the only explanation that we can offer of Herle's manœuvres.

tenu pur l'eir [1] l'un et l'autre. Pur qei sanz ceo qe vous ne desprovez lour dit [2] avaunt com il dient,[3] scil. qe J., q'est [4] ore eynz, n'est pas le fitz J., de qi seisine vous demaundez, einz le fitz W.[5] nee et engendré hors de les esposailles entre Johan et Johane, vous ne recoverez mye vostre demaunde.

Herle. Nent le fitz J., einz le fitz W. Colman, nee et engendré hors des esposailles entre J. et Johane, prest d'averrer.

Et alii econtra.

{*Ber.*[6] Il covent qe vous li donez mere si voilez avoir la terre; qar si William Colman [7] engendreit [8] J[ohan] de J[ohane] deinz les esposailes, quidez vous par taunt q'il serra desherité? Nanyl. Et allega qe N. Burnel avoit [9] une feme qe fut enceynte. N. morust. Sa feme prist altre baroun, scil. J. de Lodelay, [10] issint [11] qe issue nasquit deinz lez esposailes. Par comun conseil fut assentit [12] q'il serroit heir J. de Lodelay. Et istud confirmatur per J. de Metingham [13] iudic[em],[14] qui dixit qe putage ne tout pas heritage.

Frisk. Qe cesti J. fut fiz William Colman nee et engendré hors de chescune maniere d'esposailes,[15] prest etc.

Malm. La mere donez,[16] qe autre mere qe J[ohane] ne li poez doner.

Herle. Nous sumes a un issue general qe comprent en soi lez esposailes [17]; qe [18] s'il nasquit hors de chescune maniere d'esposailes, il nasquit pas deinz les esposailes entre J[ohan] et J[ohane].

Ber. Vous ne serrez pas r[eceu] a tel issue.

Hervy. Il covent qe vous averez q'il fut fiz W. Colmon, nee hors de chescune maniere d'esposailes entre Johan et Johane.

Ston.[19] Q'il fut fiz William Colman nee hors de chescune maniere d'esposailes entre J[ohan] et J[ohane], prest etc.

Et stetit. Et ceo fut le cas qe Johan, de [20] qi seisine il counterent, avoit un fiz Thomas eygné de cesti Johan, qe par soun nounage fut en la garde Sire H. de Veer, issint q'il poeit [21] avoir clamé ou allegé excepcion de dreyn seisi. Et pur peril pristerent cele voie de [22] pleder.}

[1] fut tenuz heir *R*; peut il estre tenu le heir *Q*. [2] *Ins.* auxi *R*. [3] *Om.* avant . . . dient *P*. [4] est *M*. [5] *Ins.* Coleman *R*; William Colman *P*. [6] What follows is from a second report in *P*, where, however, the remark is made that the other report is *melius*. We compare *L*. [7] Collemant *L*. [8] engendra *L*. [9] et alegga un case qe N. Bure *L*. [10] Lodelawe *L*. [11] et pur ceo *L*. [12] assenti *L*. [13] de M. *L*. [14] justic' *L*. [15] hors deppos' *L*. [16] Donez le mere *L*. [17] le especiel *L*. [18] car *L*. [19] *Om.* this speech, *L*. [20] *Om.* de *L*. [21] issint qe ne poyent *L*. [22] a *L*.

[John and his wife]. Therefore, unless you disprove their plea in all its length and breadth as they plead it—to wit, that John who is now 'in' is not the son of John, on whose seisin [the demand is made], but is the son of William Coleman, born and begotten outside the wedlock between John and Joan—you will not recover your demand.

Herle. Not son of John, but son of W. Coleman, born and begotten outside the wedlock between John and Joan.

Issue joined.

{Bereford, J.[1] If you want to have the land you must give him another mother. If William Coleman engendered the tenant upon Joan within [the] wedlock [between her and John], think you that for this cause the tenant would be disinherited? Nothing of the sort. (And he alleged the case of N. Burnel, who had a wife great with child. He died, and she married another husband, John of Ludlow, and issue was born within the marriage. By the common council [of the realm] it was adjudged that the child was heir to John of Ludlow. And[2] this was confirmed by the judgment of Sir John Metingham, Justice, who said that 'putage does not take away heritage.')

Friskeney. [The tenant] was the son of William Coleman, born and engendered outside any sort of wedlock.

Malberthorpe. Give him a mother. You cannot give him any but Joan.

Herle. We have offered a general proposition which comprises the special proposition. If he was born outside wedlock, he was not born within the wedlock between John and Joan.

Bereford, J. You shall not be received to such an issue.

Stanton, J. You must aver that he is the son of William Coleman, born outside any wedlock between John and Joan.

Stonore (?). He was the son of William Coleman, born outside any wedlock between John and Joan. Ready etc.

And this averment stood. And the case was that John, upon whose seisin they counted, had a son older than [the tenant], who by reason of nonage was in ward to Sir H. de Vere, so that he could[3] have made 'claim' or alleged the exception of 'last seised.' And to avoid the danger they took this way of pleading etc.[4]}

[1] From another report.

[2] Whether this comes from Bereford or the reporter is not clear.

[3] Or 'they could not.'

[4] The facts are not sufficiently stated to enable us to understand the import of this observation, especially as there is an important variation between the texts. An annotator (see our French headnote) supposes the tenant to be a son of his mother's first husband, but born after her second marriage. The proverb 'putagium non adimit hereditatem' occurs in Bracton, f. 88. For the origin of *putagium* (fornication) see Diez, s. v. *putto*.

Note from the Record.

De Banco Roll, Trinity, 2 Edw. II. (No. 178), r. 59d, Essex.

Thomas, son of John of Halstede, demands against John, son of Joan of Grauashale, a messuage, two hundred acres of land, twelve of meadow, forty of wood, six of pasture and twenty shillings' worth of rent in 'Hithingham Sibille' [Sible Hedingham], whereof John son of Adam of Grauashale, the demandant's cousin (whose heir he is), was seised. The count states that John, son of Adam, was seised in his demesne as of fee in the time of Edward I. by taking esplees, and died seised; and that from him, since he died without an heir of his body (*de se*), the fee resorted to one John as uncle and heir, brother of Adam, father of the John upon whose seisin [action is brought]; and from this John, since he died without an heir of his body, the fee descended to Lucy, Roesia, Joan, and Ellen as his sisters and heirs; and that from Lucy, since she died without an heir of her body, the right of her share descended to Roesia, Joan, and Ellen as her sisters and heirs; and that from Roesia, since she died without an heir of her body, the right of her share descended to Joan and Ellen as her sisters and heirs; and that from Joan, since she died without an heir of her body, the right of her share descended to Ellen as her sister and heir; and that from Ellen the fee descended to one John as her son and heir; and that from John it descended to the demandant as son and heir. (*Note continued on the opposite page.*)

130. ANON.[1]

En bref de dower une femme fut barré pur ceo q'ele avoit receu certaynz tenemenz en allowance de tut son dower et de ceo s'agrea.[2]

Une femme porta bref de dowere et demanda la terce partie de certeinz tenemenz. Le tenant voucha a garrant. Qe vint en court et garranty,[3] et dit qe dower ne dut ele avoir, qar ele fut dowé de [4] manier de C. en allowaunce de tut son dower de tous les tenemenz qe son baroun tynt, de quele dowement ele se agrea. Jugement, si autrefoitz dower pusse [5] demander.

Rust. Ceo ne poez dire, qar ceo maneir ne serra [6] pas pur [7] la moyté de son dowere de tenemenz qe furent etc.[8]

Herle. Vous le resceustes en dowere et de ceo agreastez pur touz les tenemenz qe furent a vostre baroun, prest etc.

Et alii e contra.

[1] Not in *Vulg.* Text from *M*: compared with *P.* [2] This note is the version of the case given by *Z.* [3] *Om.* et garranty *P.* [4] del *P.* [5] si ele puse ore dower *P.* [6] suffit *P.* [7] a *P.* [8] des tenemenz qe furent a soun baroun *P.*

Note from the Record (*continued*).

The tenant confesses that the John upon whose seisin [the action is brought] died seised in his demesne as of fee; but he says that the demandant can demand no right on that seisin. For he says that, whereas the demandant asserts in his count that John died without an heir of his body (*de se*), he had a son, John by name, namely the now tenant, who on the death of [the elder] John entered as son and heir and has hitherto held the tenements. Therefore he demands judgment.

The demandant replies that he ought not thereby to be precluded from action. For he says that the said John son of Joan [the tenant] was not the son of the John upon whose seisin the action is brought. For he says that the said John, son of Joan, was the son of one William Coleman; and this he will aver etc., and thereof he demands judgment.

The tenant rejoins that the said Joan, whom the demandant in his writ supposes to have been the tenant's mother, was coupled in lawful matrimony to the John of whose seisin etc., who of the same Joan, within the espousals had between them (*infra sponsalia inter eos habita*), begat the tenant, who was born of Joan while the said marriage endured between them; and of this he puts himself upon the country.

The demandant surrejoins that the said John son of Joan [the tenant] was the son of William Coleman, born outside all manner of espousals (*extra omnimoda sponsalia*), and not within espousals as the tenant says; and he prays that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded for the morrow [Nov. 19] of Martinmas.

130. ANON.

Dower. Acceptance of certain lands as a full satisfaction.

A woman brought a writ of dower and demanded the third part of certain tenements. The tenant vouched to warranty. [The vouchee] came into court and warranted, and said that dower she ought not to have as she was endowed of the manor of C. in allowance of all her dower of all the tenements that her husband held, and that she had agreed to this endowment. And he demanded judgment whether she could again demand dower.

Ruston. You cannot say that, for this manor would not suffice for half her dower of the tenements that were her husband's.

Herle. You received it as dower and agreed to [accept] it for all the tenements that were your husband's. Ready etc.

Issue joined.

131A. ANON.[1]

Le baron et le femme vochent eux memez par don du fraunkmariage fet a eux par le pere la femme.

Alice qe fut la femme Robert de Tateshale porta bref de dower vers L. et M. sa femme, qe voucherent eus mesmes et A. et B., soers M., com filles et heirs T. Aveint jor. A quel jor A. et B. aparurent. L. et M. furent essonié. Aveint jor. A quel jor L. et M. et A. vindrent. B. fist defaute. L. et M. mistrent avant le fet T. pere etc., par quel il dona les tenemenz a eus en fraunkmarriage. Et qaunt a la terce partie garr[antirent] a eus mesmes, et rendirent dower a demandant. Et prier[ent] qe A. fu mis a r[espondre]. Et ne fu pas chacé, enz peti *cape* agardé vers B. Et A. aveit 'idem dies.'

131B. ANON.[2]

Alice qe fut la femme William de Tatishale porta bref de dowere vers un R. et J. sa femme, et demanda la terce partie de xl. s. de rent. Le tenant voucha a garrant eux mesmes ensemblement ove A. et G. sa femme et T. et E. sa femme, soers et heirs Robert de Tateshale, qe ser[roient] som[ouns] etc. A quel jour R. et J. sa femme se profrerent et les autres fesoient defaute. Par qei issit le grant *cape ad valenciam* retournable a certein jour. A quel jour les ij. qe avoient fet defaute avant apparurent, et R. et J. se fesoint essonier et avoint jour outre par le essone. A quel jour R. et J. se profrerent com tenant et com un des vouchés. La terce parcenere fit defaute. Dont il prierent qe la defaute fut recordé.[3] Qaunt al autre parcenere qe se profry, ele mist avant chartre qe tesmoigna qe Rogier de T.[4] enfeffa son baroun et lui en francmariage, et qaunt a sa porcioun demene

[1] Text from *X*. The headnote is not contemporary. [2] Not in *Vulg*. Text from *M*. [3] acorde *M*; recorde *Conj*. [4] Rog. de T. avoint (?) *M*.

131A. ANON.

Voucher of self and coparceners by a tenant in tail who is one of the coheiresses of the donor.

Alice, who was wife of Robert of Tattershall, brought a writ of dower against L. and M. his wife. They vouched themselves and A. and B., M.'s sisters, as daughters and heirs of [Robert]. They had a day given to them. At that day A. and B. appeared, and L. and M. were essoined. Another day was given. At that day L. and M. and A. came, and B. made default. L. and M. produced a deed of [Robert] the father [of the three sisters], by which he gave the tenements to them [L. and M.] in frankmarriage. And as to one third part, they warranted to themselves, and they rendered dower to the demandant. And they prayed that A. might be put to answer [to their voucher]. However, she was not forced to that, but the petty *cape* was issued against B., and the same day was given to A.

131B. ANON.[1]

Alice, wife that was of [Robert] of Tattershall, brought a writ of dower against one R. and his wife J., and demanded the third part of forty shillings' worth of rent. The tenants vouched to warranty themselves together with A. and his wife G., and T. and his wife E., [the three female vouchees being] sisters, and being heirs of Robert of Tattershall, and prayed that they might be summoned etc. At that day R. and J. proffered themselves, and the others made default. Therefore the grand *cape ad valenciam* issued returnable on a certain day. On that day the two who had made default appeared and R. and J. had themselves essoined, and a further day was given them on the essoin. On that day R. and J. proffered themselves as tenants and as one of the vouchees. One of the parceners made default, and they prayed that the default might be recorded. The [third] parcener proffered herself; and [R. and J. the tenants] produced a charter witnessing that Robert of Tattershall enfeoffed them in frankmarriage; and, so far as concerned their own share, they rendered [dower] to the

[1] An obscure note, found only in one MS. It has been construed by the light of the preceding note, which also has been found in one MS.

ele rendi al demandant. Et qaunt a celui qe apparust ele pria q'ele garr[antist].

Et purceo q'eles furent tous vouchés com un heir et de un demande, et la terce fit defaute, sur quel defaute il tindrent de fere process, fut agardé qe la garrantie demorast tauntque la terce venist en court, et q'ele suwyt le petit *cape* etc.

132. UMFRAVILLE *v.* LONSTEDE.[1]

De debito. Un escrit fut condicionel s'il ne rendisit un escrit a certein jour etc. Et uncore fut le demandant chacé de par la court de receivere soun escrit, pur ceo qe l'autre ly tendyt et souvent avoit fet, racione equitatis quia petens non habuit dampnum de detencione : secus est si habuisset.

Robert Dunfreville[2] porta son bref de dette vers R. Lousteb[3] et demanda c. mars, en les queux il se avoit obligé s'il ne rendi[4] un escript a lui a certein jour. A quel jour etc.

West. A cesti bref ne deit il estre r[espondu], qar nous vous avoms sovent tendu l'escript et unqore fesoms, et veez les icy,[5] et tous jours avoms esté prest etc., et demandoms jugement.

Pass. Vous nous[6] tendistes pas[7] a jour nomé en l'escript de qei surde[8] nostre accioun. Jugement, si nous ne devoms estre r[espondu].

Herle. Et nous jugement, depus qe vous ne poez dedire qe nous ne[9] vous avoms tendu l'escript et unqore fessomes et prest sumes etc.,[10] et[11] ne poiez moustrer coment vous estes endamagé par default del escript. Jugement. Et cel hure[12] qe nous deussoms avoir rendue si fumes en le Est'[13] et un quart del an après et lessames l'escript a l'oustell ove nostre femme[14] pur rendre vous l'escript.[15]

Pass. Si cel escript fut simple, vostre response vaudereit pur chescun franc homme[16]; mès l'escript est condicionel; la quele condicion nous doune accion a demander cele dette par[17] condicion nent paremplé, le quel il[18] ne put dedire. Jugement *ut supra*.

[1] Not in *Vulg.* Text from *M*: compared with *P*, *Q*, and a short version in *X*. Headnote from *Q*. [2] Gilbert de Frevile *P*. [3] Ric. de Lonstede *P*; Lenstede *Q*. [4] rendesit *P*. [5] *Om.* et . . . icy *P*, *Q*. [6] ne *P*. [7] *Ins.* a nous *P*. [8] sourdit *P*; sourdist *Q*. [9] *Om.* ne *P*, *Q*. [10] et tut temps avoms este prest et *P*; *sim. Q*. [11] *Om.* et *M*. [12] jour *P*. [13] *Doubtful*, *M*; fumes nous de la meer *P*, *Q*. [14] *Om.* ove . . . femme *P*. [15] *Om.* vous l'escript *P*, *Q*. [16] *Om.* pur . . . homme *P*, *Q*. [17] *Ins.* la *P*, *Q*. [18] la qele nent paremple il *P*; *sim. Q*, *but* parempli.

demandant. And as regards the parcener who appeared, the tenants prayed that she might warrant.

And because they all were vouched as one heir and upon one demand, and one of the three made default, and [R. and J. the tenants] had demanded that process should be made against her, it was adjudged that the warranty should stand over until the third parcener appeared in court and that they might sue the petty *cape* etc.

132. UMFRAVILLE *v.* LONSTEDE.[1]

Debt for a penalty by breach of a condition. On equitable grounds the Court refuses to give judgment for the plaintiff, because, though the condition was broken, the plaintiff was not damaged by the breach. A distinction is drawn between debt and penalty. Remarks on the power of an attorney.

Robert Dumfraville brought his writ of debt against Richard of Lonstede and demanded a hundred marks, in which [the defendant] had bound himself in case he should not deliver a certain writing to [the plaintiff] on a certain day, on which day [default was made].

Westcote. To this writ he ought not to be answered, for we have often tendered you the writing, and do so still. See it here! And always we have been ready etc. We demand judgment.

Passeley. You did not tender it on the day named in the writing whence our action arises. Judgment, whether we ought not to be answered.

Herle. We also pray judgment, for you cannot deny that we have tendered and still tender the writing, and are ready etc.; and you cannot show that you were damaged for want of the writing: judgment. And on the day when we ought to have delivered it and for a quarter of a year afterwards we were in the East,[2] and we left the writing at home with our wife for delivery to you.

Passeley. If the writing were unconditional your answer would serve for any free man[3]; but the writing is conditional, and the condition gives us an action to demand this debt for an unfulfilled condition; and that it is unfulfilled [the defendant] cannot deny. We demand judgment as before.

[1] Proper names uncertain.
[2] Or 'beyond the sea.'
[3] As we might say, 'no gentleman would quarrel with it.'

Berr. Vous demandez cele dette purceo qe l'escript ne fut pas rendue ; et[1] a ceo vous dit il qe avant ces hures il ad tendu l'escript et tous jours fut[2] prest et unqore[3] le vous tende. Par qei il est bon[4] qe vous le resceivez. D'autrepart, ceo n'est pas purement[5] dette, mès une peyne, et veez par quele equité vous poez demander ceo peyne ![6]

{*Ber.*[7] Quel equité serra de agarder a vous le dette de pus qe l'escrit est prest, si vous ne porriez moustrer qe vous fustes endamagé par la de[tenue] ? Par qei volez receivre l'escrit ?}

Pass. G. est icy par attorné, et l'attorné est icy[8] a resceivir les c. mars.

Ber. Vous estes receu attorné de[9] resceivre et[10] nent a perdre.[11] Jeo[12] ne crey nent qe celui qe vous resceut vous resceut en tiel forme. Par qei receivez l'escript.[13]

Pass. Jeo ne pusse fere sanz voz discrecions,[14] qar si ley le soeffre nous le froms[15] volunters.

Ber. Si vous demorrez en noz jugements,[16] ces vij.[17] aunz ne avendrez a vostre dette, qar le jugement de ley ne se deit fere en la manere.[18]

133A. BURTON (ABBOT OF) *v.* LANCASTER (EARL OF).[19]

Replevine, ou excepciouné fut qe le lieu ou la prise fut fete fut dil maner de C. qe fut dil auncien demeyne le Roy : ideo quer[itur] Domesd[ay].

L'Abbé de Bortone[20] porta son *replegiari* vers le Counte de Lancaster etc.

Herle. Le lieu ou il se pleint la prise estre fet est deinz le manier de C., q'est auncien demene le Roy, ou nul bref[21] ne court si noun petit bref de dreit clos. Jugement si a cesti bref, q'est a la comune ley, devoms respondre.

Fris. Il est un[22] homme a la comune ley, et ceo q'il tent se[23] tent

[1] *Om.* et *M.* [2] ad este *P*, *Q*. [3] *Ins.* est et le vous *Q*. [4] qei bon est *P*. [5] proprement *P*, *Q*. [6] et veez si par equite pusez cele peyne demaunder *P* ; *sim. Q*. [7] From the short version in *X*. [8] *Pass.* Sire, J. ad atourne G. et ad fet atourne *P*. [9] a *P*, *Q*. [10] ergo *Q*. [11] prendre *Q*. [12] a receyvre lez jugemenz et a prendre, mes jeo *P*. [13] *Ins.* si vous volez *P* ; *sim. Q*. [14] *Pass.* Ceo pooms fere saunz voz descrecions *P*, *Q*. [15] receveroms *P*, *Q*. [16] demorez a noz descrecioun *P* ; *sim. Q*. [17] viij. *P*. [18] *Om.* qar. . . . manere *P*, *Q*. [19] Not in *Vulg.* Text from *M* : compared with *Q*. Headnote from *Q*. [20] Bartone *Q*. [21] *Ins.* le Roy *Q*. [22] *Om.* un *Q*. [23] si *Q*.

Bereford, J. You demand this debt because the writing was not delivered, and he says that before now he has tendered it, and that he was always ready, and that he tenders it now. Therefore it is well that you receive it. Moreover, this is not, properly speaking, a debt; it is a penalty; and with what equity (look you!) can you demand this penalty?

{Bereford, J.[1] What equity it would be to award you the debt when the writing is tendered and you cannot show that you have suffered damage by the detention! So, will you receive the writing?}

Passeley. [The plaintiff] is here by attorney, and the attorney is here to receive the hundred marks.

Bereford, J. [According to you then] the attorney was received [by the court] to receive and not to lose.[2] I do not believe that he who received you [as attorney] received you in that form. Therefore accept the [tendered] writing.

Passeley. I cannot do that unless under a judgment of the court. If the law will suffer it, we will do it gladly.

Bereford, J. Were you to remain asking for our judgment, you would not come by your debt these seven years, for a judgment of the law is not to be given in that sort of way.[3]

133A. BURTON (ABBOT OF) *v.* LANCASTER (EARL OF).

In an action of replevin, the defendant before avowry pleads 'ancient demesne.' That the *locus in quo* is within a manor of the ancient demesne is proved by Domesday Book. The question whether the plaintiff's tenure is such that he can bring replevin discussed.

The Abbot of Burton brought his replevin against the Earl of Lancaster etc.

Herle. The place in which, as he complains, the taking was made is in the manor of C., which is the King's ancient demesne where no writ runs except the little writ of right close. Judgment, whether we ought to answer to this writ which is a writ of the common law.

Friskeney. [The Abbot] is a man under common law, and what

[1] From a compressed version of the case.

[2] Or, 'The attorney is here to receive our judgment and to lose [as well as to gain].' The attorney, it will be remembered, is appointed 'ad lucrandum et perdendum.'

[3] Observe that the court does not propose to give judgment against the plaintiff, who has the letter of the bond on his side. There is some difference in our books as to the last remarks attributed to Passeley and Bereford.

il com de droit de sa eglise ; et s'il ne soit r[espondu] a cestui bref, si est il forclos a touz jours ; qar il n'est pas sokeman de[1] user le *monstraverunt*, et[2] ceux[3] qe sunt a la comune ley ne ount pas tiel remedie.[4] Jugement si a tiel bref ne devoms estre r[espondu].

Malb. Nous vous dioms qe[5] nostre excepcion est al lieu, qe n'est pas a la comune ley, et nent a la persone.

Pass. Nostre accion est tut personel et soune en trespas, qar l'avowerie n'est pas fet. Si[6] la qe le play soit venu en le realté,[7] n'entendoms mye qe ceste excepcion soit resceivable.

Herle. Nous sumes[8] pleint qe la prise fut fet en tiel lieu qe n'est pas a la comune ley, et chose qe touche auncien demene n'est pas pledable ceyns.

Fris. Cel lieu ensemblement ove autres tenemenz sont tenuz del Counte par homage et par la[9] blaunke ferme, et tous ceux tenemenz qe sount tenuz par la[10] blaunce ferme sount a la comune ley etc.

Herle. Seoms a un si le manier soit auncien demene,[11] de quele manier cel lieu est parcele.

Malb. A ceo n'avoms mester, qar nous dioms qe les tenemenz sount[12] a la comune ley, pledez et pledables[13] ceinz, sanz ceo qe nul bref de droit clos corust[14] etc. Et si vous le voillez dedire, nous le vous voilloms averrer.

Herle. Nous voloms averrer par Domesday qe le manier, dont cele lieu est parcele, est auncien demene le Roy ; et eux ne mostrent par fet[15] du Roy ne de seignur qe l'estat soit chaungé. Jugement, si ceyns devoms respondre.

Fris. Nous vous dioms qe le Counte, q'ore est, est[16] seisi del homage et de la fraunche ferme,[17] et le Count Edmund son pere et le Counte de Ferreys,[18] qi estat le Counte ad, ount esté seisi del homage etc.,[19] et tous jours pledez et pledables a la comune ley.

Herle. La ou vous alleggez q'il ad receu homage, par qi mayns ?

Fris. Ceo n'avoms mester a dire, qar vous n'estes pas al avowerie ou il covendreit par cas[20] a dire. Mès nous n'avoms[21] autre chose a fere mès a fere le lieu[22] a la comune ley.

Herle. Sire, nous avoms esté seisi par my la mayn l'Abbé des services usueles en auncien demene,[23] nomement des arrures, seres et

[1] a *Q.* [2] qe *Q.* [3] ceo *M.* [4] End of speech, *Q.* [5] *Om.* qe *M.* [6] fet et cy *Q.* [7] en royalte *Q.* [8] Vous estes *Q.* [9] *Om.* la *Q.* [10] *Om.* la *Q.* [11] *Ins.* ou noun *Q.* [12] qe cel leu est *Q.* [13] ley pledable *Q.* [14] clos ne court *Q.* [15] fey *M* ; le fait *Q.* [16] *Om.* est *M.* [17] *Om.* et . . . ferme *Q.* [18] Ferers *Q.* [19] homage et dil blanche ferme *Q.* [20] qar vous navez pas avowe, ou par cas serreit mester *Q.* [21] *Ins.* mester *Q.* [22] chose dire fors faire les tenemenz *Q.* [23] End of speech, *Q.*

he holds he holds in right of his church, and, if he be not received to this writ, he is foreclosed for ever; for he is not a sokeman to use the *monstraverunt*, for those who are under common law have not that remedy. Judgment, whether we ought not to be answered to this writ.

Malberthorpe. We tell you that the exception we take is aimed, not at the [plaintiff's] person, but at the place. The place is not under the common law.

Passeley. Our action is wholly personal and sounds in trespass, for only when an avowry has been made does the action [of replevin] come into the realty, and until then we do not think that this exception is receivable.

Herle. We have[1] urged that the taking was made in a place which is not under the common law, and matters which touch the ancient demesne are not pleadable here.

Friskeney. This place together with other tenements is holden of the Earl by homage and a blanch ferm, and all tenements holden by blanch ferm are under common law.

Herle. Let us agree as to whether the manor of which this place is parcel is or is not ancient demesne.

Malberthorpe.[2] We need not do that, for we say that these tenements are pleaded and pleadable here and under the common law, so that no writ of right close runs etc. If you will deny this, we will aver it.

Herle. We will aver by Domesday that the manor, of which this place is parcel, is the King's ancient demesne, and they do not show that its condition has been changed by any deed of the King or the lord. Judgment, whether we ought to answer here.

Friskeney. We tell you that the Earl, who is now seised of the manor and of the free ferm, and Earl Edmund his father, and the Earl of Ferrars, whose estate the [present] Earl has, have been seised of the homage etc. and [that these lands] have always been pleaded and pleadable under the common law.

Herle. You say that he has received homage: by whose hands?

Friskeney. We need not say; we might have to do so if you had got to your avowry; but you are not there yet. At present we have nothing to do but to show that the place is under the common law.

Herle. Sir, we have been seised by the Abbot's hand of the services usual in the ancient demesne: in particular, ploughings,

[1] 'You have' is another reading.
[2] Perhaps the name is wrong. See above.

des autres services qe appendent a la basse tenure. Et s'il le[1] veot dedire, prest etc.

Ber. Vous attachez sur lui qe le lieu est auncien demene. Mès[2] en un[3] manier pount estre plusours tenures, com chivalrie, seriauntie, basse tenure. Mès nous voloms[4] savoir si le manier soit auncien demene; qar, s'il n'est pas, tut vostre plè amounte a nent. Et purceo suez bref a[5] fere venir Domesday.

133B. BURTON (ABBOT OF) *v.* LANCASTER (EARL OF).[6]

L'Abbé de Burtone porta son *replegiari* vers Thomas Counte de Lancastre, et dit qe a tort avoit pris ses avers, nomement etc., en un leu q'est apelé Wysyngesdonemorz.

Herle. Wysing' est aunciene demene de Pykerynge ou nul bref ne court fors etc. Et de[7] ceo vouchoms recorde de Domesday. Jugement du bref.

Fris. C'est une prise des avers qe veut estre terminé en damages, et est tut personel devaunt l'avowerie. Estre ceo, l'Abbé trova sa eglise seisi[8] de certeyn tenemenz, dount cel leu est parcele, et il n'ad rien si noun come gardeyn du dreit de sa eglise etc. Jugement, si par comune ley ne deive il estre r[espondu].

Herle. Vous estes asserté par Domesday qe Wysing' est aunciene demene ou etc. Jugement.

Pass. Si l'Abbé ne seit r[espondu] a son *replegiari* de ses[9] avers pris, et seit chacé au petit bref de dreit etc., il n'avereit pas tiel bref de prise des avers, q'est personel avaunt l'avowerie; qar il n'y ad terre ne tenement ne rien en demande pur rien q'est uncore dit. Et aunciene demene est granté plus par reson de la tenance qe pur trespas fet en l'anciene demene. Et priom qe nous eyom la comune ley.

West. ad idem. Si l'Abbé seit chacé a les usages de l'aunciene demene et ne seit pas r[espondu] a la comune ley, il ne se put descharger par le *monstraverunt* come autre sokeman put, qe l'Abbé ne put estre sokeman, qar il n'ad rien mès cum du dreit de sa eglise en pure et en perpetuel aumoyne. Dount grant duresse ensuereit si l'Abbé ne fut r[espondu] a la comune ley en ceste prise des avers, personel avaunt l'avowerie. Par qey etc.

[1] ne *M.* [2] Begin the speech here, *Q.* [3] *Ins.* autre *Q.* [4] *Ins.* adeprimes *Q.* [5] de *Q.* [6] Text from *R* (from Hil. an. 3). [7] *Om.* de *R.* [8] si *R.* [9] ces *R.*

sowings, and other services belonging to the base tenure. If he will deny, ready etc.

Bereford, J. You charge him with this, that the place is ancient demesne. But in one and the same manor there may be various tenures: chivalry, serjeanty, base tenure. However, we wish to know whether the manor is ancient demesne, for, if it is not, your plea amounts to nothing. So sue a writ for the production of Domesday.

133b. BURTON (ABBOT OF) *v.* LANCASTER (EARL OF).

The Abbot of Burton brought his replevin against Thomas, Earl of Lancaster, and said that wrongfully he took his beasts, to wit etc. in a place called Wysyngesdonemorz.

Herle. That place is ancient demesne of Pickering, where no writ runs etc. And for this we vouch the record of Domesday. Judgment of the writ.

Friskeney. This is an action for taking beasts which makes for a recovery in damages, and is purely personal until an avowry is made. Moreover, the Abbot found his church seised of certain tenements, of which this place is parcel; and he has nothing but as a guardian of the right of his church. Judgment, whether he ought not to be answered under the common law.

Herle. You are certified by Domesday that [the place] is ancient demesne, where [no writ runs etc.] Judgment.

Passeley. If the Abbot be not answered to his replevin for beasts taken, but is driven to his little writ of right etc., he can have no such writ for a taking of beasts; for that is [a] wholly personal [action] before avowry; and, as far as anything goes that has yet been said, there is no land or tenement in demand. And [the plea of] ancient demesne is given much rather because of the tenancy than because the trespass was done within the ancient demesne. We pray that we may have the common law.

Westcote on the same side. If the Abbot were driven to [rely on] the usages of the ancient demesne and were not answered at the common law, he could not discharge himself by a *monstraverunt* as one of the sokemen might. For the Abbot cannot be a sokeman, for he has nothing except in the right of his church in pure and perpetual alms. Thus great hardship would follow if he were not answered at the common law in this action for beasts taken, which is a personal action until avowry.

Berr. Le plus franc homme qe seit, Abbé ou autre, qe tiegne terre ou tenement en aunciene demene, il tendra la terre par mesme la conditioun qe autre sokemon fet; et la terre ne seit en fraunc fee par feffement le seignour du manoir ou en autre manere.[1] Par qey si l'Abbé voille tenir la terre q'est de l'aunciene demene, covent q'il seit de lour conditioun. (Et sic nota qe l'Abbé put user le *monstraverunt.*)

Fris. L'Abbé et toux ses[2] predecessors ount tenuz totte la terre q'il unt en Wysing' com franc fee et pledable a la comune ley du temps dount memorie ne court. Prist etc.

Herle. Al averement etc., qe la court est asserté par Domesday qe le leu ou la prise fut fete etc. est del aunciene demene. Jugement si sanz especialté moustrer coment cel leu seit trové en franc fee etc.[3]

Pass. Seisi com de franc fee du temps etc.

Note from the Record.

De Banco Roll, Trinity, 2 Edw. II. (No. 178), r. 98d, Derb.

The Abbot of Burton-upon-Trent brings replevin against Thomas, Earl of Lancaster. The Earl with one John Wyldegus took six oxen and six heifers on [April 11, 1306] Monday next after the close of Easter in 34 Edw. I. in the vill of Huncyndon in a place called Huncyndonemore; damages are laid at 10*l.*

The Earl pleads that the said vill is of the ancient demesne of the Crown of England; and this he is ready to aver by the book which is called Domesday.

The process is continued until the morrow of Candlemas in 3 Edw. II., when the Treasurer and Barons certify that on an inspection of Domesday Book it is found that Huncyndon is of the ancient demesne of the Crown of England. Thereupon the Earl prays judgment.

The Abbot says that the tenements which he holds in the vill were heretofore frank fee (*liberum feodum*) and at the common law. For he says that one Robert of Thorpe, sometime lord of Huncynedon and Thorpe, held those tenements of Robert de Ferrars, Earl of Derby, by homage and blanch ferm (*albam firmam*); and that likewise all Robert's ancestors held of the Earl of Derby's ancestors by the like service of homage and blanch ferm as frank fee; and that Robert enfeoffed thereof Robert of Huncyndon to hold of [the feoffor] and his heirs by the service of twelve pence a year for all service, save forinsec service; and that Robert [the feoffee] died seised; and that Roger his son and heir succeeded him; and that Roger thereof enfeoffed one Laurence, the Abbot's predecessor, to hold by the same service

[1] manere *Conj*; *om. R.* [2] ces *R.* [3] *Om.* etc. *R.*

Bereford, J. However free a man may be, abbot or other, if he holds land or tenement in ancient demesne, he shall hold it by the same condition as that by which any other sokeman holds : supposing, that is, that the land is not in frank fee by feoffment of the lord or of another. Therefore, if the Abbot will hold land which is of the ancient demesne, it behoves him to be of the condition [of the sokemen]. (So note that the Abbot can use the *monstraverunt.*[1])

Friskeney. The Abbot and all of his predecessors have held all the land that they have in [the said place] as frank fee and pleadable at the common law from time immemorial. Ready etc.

Herle. To that averment [you cannot get], for the Court is certified by Domesday that the place where the taking was made is of the ancient demesne. Judgment, whether without a specialty to show it you can be received to aver that this place is frank fee.

Passeley. Seised as of frank fee from time etc.

Note from the Record (*continued*).

of twelve pence a year for all service, save forinsec service ; and that the tenements are frank fee and at the common law etc. and held by homage and the service of blanch ferm in manner aforesaid from time whereof there is no memory ; and this he is ready to aver etc.

The Earl says that—whereas it appears by the said book, and the Court here is certified, that the said vill (whereof the *locus in quo* is parcel) is wholly (*integre*) of the ancient demesne of the Crown of England ; and whereas the Abbot shows no deed of the King or other specialty whereby the said tenements were changed into frank fee and out of the nature of the tenancy (*et extra naturam tenencie*) of the other tenements in the vill, which are of the ancient demesne ; and whereas the Abbot's tenements are of the same condition and are held of the Earl by the like services as the tenements of the other sokemen in the vill (as the Earl is ready to aver etc.)—he demands judgment whether the Abbot ought to be admitted to an averment by the country against the said record.

A day is given to the parties to hear their judgment here at a month from Easter [3 Edw. II.], saving to them the reasons to be alleged on one side and the other (*salvis partibus rationibus suis hinc inde dicendis*). There are adjournments to three weeks from Michaelmas [4 Edw. II.], to the quindene of Trinity 5 Edw. II., and thence to the morrow of All Souls.

The title of the Abbot to the lands in question can be traced in the Burton Cartulary (Salt Archæological Society), and there (p. 87) will be found an account of some later litigation between him and the Earl of Lancaster.

[1] Probably no part of Bereford's speech.

134. SENESCHAL *v.* MERTON COLLEGE.[1]

Scire facias. Nota qaunt revercioun est graunté par fait en pays.

William[2] Seneschal suwy un *scire facias* vers Mestre J. de Wantyng, Mestre de les Escolers de la Mesoun de Mertone de Oxenforde, a savoir moun s'il savoit rien dire pur qei un jugement ne se deust fere solonc le verdit de une assise de novele deseisine entre eux pris de certeyn tenemenz en la counté de Leycestre devaunt Sire W. Inge[3] etc. justices assignez en la dite countee.[4] Que vint et demanda l'oy[5] de bref. Par qei le recorde vint en court, qe voleit : 'Ex parte Willelmi filii Willelmi nobis est ostensum etc.'

Toud. Ceo record et procès est fet venir ceinz a la sute William le fitz William le Seneschal; par qei n'entendoms mye venu sanz garraunte.[6]

Brab. Ceo recorde et procès est venu[7] ceinz a sa sute[8]; par qele voye le[9] freit il venir[10] derechief?

Toud. Del hure qe le procès est fet venir ceinz sanz garraunt, nous entendoms[11] mye qe vous voillez a ceste foitz ceo plè tenir. Estre ceo, le procès est fet venir ceinz a la sute W. le fiz W. et le record veut W. le Seneschal.[12] Estre ceo, un bref original et un[13] bref[14] patent abatereit par tiele variaunce.[15]

Roub.[16] W. le fitz W. est mesme[17] la persone q'est partie a ceo recorde. Par qei nous demandoms si vous[18] voillez autre chose dire.

Toud. demanda oyer[19] del recorde. Qe voleit qe W. le Seneschal porta bref vers Maistre Johan de Wantyng mestre[20] etc. et plusurs autres, et se pleint estre disseisi de la terce partie de un miez[21] et v. bovez de terre,[22] xl. s. de rente en A. Touz estre[23] Mestre J. respondirent par baillif et disseint q'ils ne fesseint nul tort etc.[24] Par qei etc. l'assise fut agardé vers eux.[25] Et Maistre J. dit qe ceux tenemenz furent en ascun temps en la seisine un J.[26] de Mertone qe ceux tenemenz ov autres tenemenz dona jadys a Robert[27] maistre de la

[1] Not in *Vulg.* Text from *M*: compared with *P*, *Q*, and a brief version in *X*. [2] *Ins.* le *P*. [3] Ing' *M*; Inge *P*, *Q*. [4] *Om.* justices . . . countee *P*, *Q*. [5] le oy *P*. [6] nous entendoms qe nous sumes saunz garaunt *P*. [7] est fait venir *Q*. [8] volunte *P*. [9] *Om.* le *P*. [10] *Ins.* ceynz *P*, *Q*. [11] nentendoms *P*, *Q*. [12] *Om.* estre . . . seneschal *M*, *Q*. [13] *Om.* un *P*. [14] *Om.* bref *Q*. [15] tele garr' *Q*. [16] *Ins.* Si *M*; *om.* *P*, *Q*. [17] eust mene *M*; est mesme *P*, *Q*. [18] *Ins.* ne *P*, *Q*. [19] le oy *P*; loy *Q*. [20] *Ins.* de la mesoun de Mertone *P*, *Q*. [21] mees *P*, *Q*. [22] *Ins.* et de *P*; *ins.* et *Q*. [23] forspris *P*. [24] qil navoyent nul tort fet *P*; *sim.* *Q*. [25] *Om.* par . . . eux *P*, *Q*. [26] W. *P*, *Q*. [27] dona a Robert jadis *P*; *sim.* *Q*.

134. SENESCHAL *v.* MERTON COLLEGE.

Upon the grant of the reversion of tenements held in dower, the doweress attorns to the grantee, but not until the grantor is dead. *Qu.* whether this attornment is effectual.

William the Seneschal sued a *scire facias* against Master J. of Wanting, Master of the Scholars of the House of Merton in Oxford, who was called upon clearly to certify the Court as to whether he had anything to say why a judgment should not be made according to the verdict of an assize of novel disseisin taken between them for certain tenements in the county of Leicester before Sir W. Inge [and his fellows], justices assigned in the said county. [The Master] came and demanded to hear the writ. So the record was brought into court, and it ran: 'On behalf of William son of William it is shown to Us etc.'

Toudeby. This record and process are brought here at the suit of 'William son of William the Seneschal,' and therefore we do not think that there is warrant for these proceedings.

Brabazon, C. J. This record and process have been brought here at his suit. By what means would he make them come here over again?

Toudeby. Since the process has been brought here without warrant, we do not think that you will hold this plea on this occasion. The process is brought into court at the suit of 'William the son of William,' and the record says 'William the Seneschal.' An original writ or a patent would be abated for such a variance.

Roubury, J. But William son of William is the same person who is party to this record. So we ask you if you have anything else to say.

Toudeby demanded a hearing of the record. It said that William the Seneschal brought a writ against Master John of Wanting, Master etc., and certain others, and complained that he was disseised of a third part of a messuage and of five bovates of land and of forty shillings' worth of rent in A. All, except Master John, answered by bailiff and said that they had done no tort etc. So the assize was awarded against them. And Master John said that the tenements were at one time in the seisin of John[1] of Merton, and that he gave them with others to Robert, then Master of the House etc., and to his successors

[1] Some MSS. say 'W.'

maisoun etc. et a ses successours a tous jours. J.[1] de Mertone morust. Après qi mort Agnes sa [2] femme porta bref de dowere, et fut dowé de la terce partie del entier. Agnes devia. Après qi mort Maistre J. de Wantyng [3] entra com celui a qui la reversion appendoit. William le Seneschal dit qe Johan de Mertone de ceux mies et v. bovez de terre et les xl. s. de rente, dont la terce partie q'il ad mys [4] en sa [5] vewe et en sa pleinte, ovesqe autres tenemenz morust seisi. Après qi mort entrerent iij. soers com un heir,[6] scil. S. J. et A., et assignerent a [7] lour miere la tierce partie de ceux tenementz en dowere pur qaunt qe a lui affereit de autres tenementz.[8] Et dit qe les ij. parties de ceux tenemenz, ovesqe la terce partie qaunt ele eschereit [9] après la mort Agnes, furent allotez a A.[10] la une soer en sa purpartie. La quele A. de les ij. parties de mesmes [11] ceux tenemenz enfeffa cesti W. ovesqe la terce partie qaunt ele eschereit.[12] Par quele grant Agnes se atturna, issint q'après la mort Agnes, W. entra [13] et fut seisi, si la qe [14] Maistre J. et les autres lui ousterent etc. Par qei l'assise fut agardé. Qe vint et dit qe Johan de Mertone devia seisi de ceux tenemenz et dit [15] pleinement cum W. avoit avaunt dit. Mès [16] dit qe A.[17] ne se atturna poynt sur le grant taunt qe a demi an après q'ele se aturna a W. après le requeste un A. de B.[18] Et disseint outre q'après la mort Agnes, W. entra et seisi fut un houre de jour taunt qe Mestre J. et les autres lui [19] ousterent.[20] Et prierent eide des justices. Sur ceo jour fut doné outre a les parties taunt qe a lour prochein venu en ceux parties a oyer [21] lour jugement. A quel jour Mestre J. vint et dit qe l'assise ne fut pas pleynement examiné; qar il [22] dit qe A. ne se atturna point a W. vivaunt Alice qe cest r[eversion] [23] graunta [24] etc.; la quele chose il n'avoit [25] pas dit pour lour verdit,[26] sanz quele chose savoir il ne pount [27] de ley [28] nul [29] jugement fere. Par qei il pria les justices q'il feisent revenir l'assise. Par qei il agarderent q'il suwyt execucioun de fere les venir.[30] Et fut le cas tiel qe avant [31] la certificacion fut [32] prise, W. fit venir le recorde devant les justices et pus suwy bref de garnisement *ut supradictum est.*

[1] W. *P*, *Q*. [2] la *Q*. [3] mort J. *P*, *Q*. [4] partie de ceux tenemenz est *Q*. [5] *Om.* sa *Q*. [6] come heirs *Q*. [7] *Ins.* Agnes *P*; A. *Q*. [8] apres qi mort ceus tenemenz et altres descendirent a ses iij. soers Alice, Beatrice et Custance, qi assignerent cest terce partie mis en vew a Agnes la femme J. en noun dower *X*. [9] cheroit *P*; accherreit *Q*. [10] Agnes *Q*. [11] *Om.* de les . . . mesmes *Q*. [12] escherra *Q*. [13] *Ins.* cum en sa reversion *P*, *Q*. [14] seisi tanqe *P*, *Q*. [15] agarde, la qele disoit *P*; *sim. Q*. [16] *Ins.* ele *P*. [17] Agnes *P*. [18] demi an apres la mort etc. qe a la requeste un A. de S. satourna *P*; *sim. Q*. [19] taunqe ceus li *P*; tantqe ceux nommez ly *Q*. [20] *Ins.* qe furent nomez *P*. [21] oyr *P*. [22] ele *P*. [23] *Om.* cest reversion *P*, *Q*. [24] *Om.* graunta *M*. [25] ele nad *P*; il navoient *Q*. [26] dit par verdit *P*; dit pur verdit *Q*. [27] poient *P*. [28] *Om.* de ley *P*, *Q*. [29] *Om.* nul *P*, *Q*. [30] sywesit de fere venir lassise *P*; *sim. Q*. [31] cas qe qaunt *P*, *Q*. [32] *Om.* fut *M*.

for ever. John of Merton died. On his death Agnes, his wife, brought a writ of dower, and was endowed of the third part of the whole. Agnes died. On her death Master John of Wanting entered as he to whom the reversion belonged. [On the other hand], William the Seneschal said that John of Merton died seised of the house, five bovates of land and forty shillings' worth of rent, the third part whereof William had placed in his view [for the jurors of the assize]. On John's death (so William said) there entered his three sisters as one heir, to wit, S., J., and Alice;[1] and they assigned a third part of those tenements to their mother [Agnes] in dower for as much as might belong to her in other tenements. And William said that the two [remaining] parts of these tenements, together with the third part when it should fall in after Agnes's death, were assigned to Alice, one of the sisters, in her share. Then this Alice enfeoffed this William of the two parts, together with the third part when it should fall in. On this grant Agnes [the doweress] attorned herself, so that after her death William entered and was seised until Master John and the others ousted him. Thereupon the assize was awarded. It came and said that John of Merton died seised of these tenements, and it said in full what William had said, but said also that Agnes did not attorn herself upon the grant for a half-year, after which she attorned herself to William at the request of one A. B. And they said further that, after the death of Agnes, William entered and was seised for some time[2] until Master John and the others ousted him. And they [the jurors] prayed aid of the Justices. Upon this a further day on the next coming [of the Justices] into those parts was given to the parties to hear their judgment. On that day Master John came and said that the assize was not fully examined, for he said that Agnes did not attorn herself to William while Alice was alive etc., and that the jurors had not stated that fact in their verdict, and that until that fact was ascertained, no judgment could lawfully be made. So he prayed the Justices to cause the assize to come back. They awarded that he might sue ['certification'] to bring them back. But before the 'certification'[3] was taken, William had the record brought before the Justices [in the King's Bench] and sued out the writ of garnishment [*scire facias*] as aforesaid.

[1] One MS. says 'Alice, Beatrice, and Custance'; but this looks like 'A, B, C.'

[2] Literally 'for an hour of the day.'

[3] A process calling back the jurors to explain an obscure verdict.

Toud. Vous veez bien coment la certificacion fut agardé par ceux qi furent justices a cest assise prendre, la quele ne fut mye pris. Et prioms qe vous facez revenir [1] l'assise a savoir moun si Agnes se atturna a W.[2] vivaunt Alice [3] ou ne mye.

Malb. Il n'est pas mester [4] qe l'assise revigne d'estre examiné sur cele poynt, qar il y ad verdit pleyn, sur quel la court purra bien jugement fere. Et prioms jugement.

Toud. Le dreit de la reversion des tenemenz qe Agnes tynt en [5] dowere ne [6] put attacher en [7] la persone W. par my le grant Alice si atturnement ne soit fait [8] vivaunt Alice. Mès ore vous dioms qe Alice morust avant qe Agnes se atturna a W., issi qe le dreit ne fut unqes devesti en sa persone en sa vie par qei [9] title le dreit [10] par my nulle atturnement a luy fet après la mort Alice ne put acrestre; qe, si jeo vous face une chartre de certein tenemenz, après ma mort vous plauntez vous [11] einz sanz liveré de seisine,[12] vostre estat est defessable par ley, issint qe mon heir avera le mortdauncestre après ma mort. Auxi par de cea, quele grant qe Alice fit etc. Et del hure qe W. n'avait unqes estat par atturnement etc. vivaunt A. etc.,[13] n'entendoms mye qe vous volez a jugement aler sanz estre asserté de cele point.

Malb. Il ne covent ja [14] avoir certificacion de cele poynt, qar vostre title qe vous feistes en pledaunt si est pleinement defet et le nostre trové verroy auxi com nous avoms dit, et issint y ad il pleine verdit. Estre ceo, vous n'estes pas celui qe put [15] avantage prendre par le nounatturnement A., ja fusse [16] issi [17] com vous dites; qar vous n'estes le heir Alice qe pout [18] dreit en sa [19] persone affermer. Par qei etc.

Herle. Put estre qe le heir Alice nous ad relessé et quiteclamé etc.[20] tut son dreit etc. Par qei, sanz ceo qe nous ne seioms [21] partie a cele atturnement trier, nostre dreit par cas serroit perdue. Par qei etc.

Brab. Vous ne poiez de meillour condicion estre qe ne serroit l'eir A. après l'atturnement; qar [22] nous trovoms par recorde qe vous preistes [23] vostre title de un J.[24] de Mertone, qe de ceux tenemenz

[1] venir *P*, *Q*. [2] *Om.* a W. *P*. [3] A. *M*, *Q*. [4] Il ne bosoygne *P*, *Q*. [5] *Ins.* noun de *P*, *Q*. [6] *Om.* ne *M*; *ins. P*, *Q*. [7] put estre attache *Q*. [8] Alice et lattournement ne se fist *Q*. [9] par con[sequent ?] *M*. [10] ne se devesti unqes de la persone Alice par qei title de dreit *P*; unqes devestu de la persone A. ou comun title de dreit *Q*. [11] *Om.* vous *M*, *Q*. [12] *Om.* sanz . . . seisine *P*, *Q*. [13] *Om.* etc. *P*, *Q*. [14] *Ins.* de *P*. [15] poeit *P*; poetz *Q*. [16] fust *Q*. [17] tut fut ceo issint *P*. [18] qe vous pussez *P*; poetz *Q*. [19] vostre *P*. [20] *Om.* et quiteclame etc. *P*, *Q*. [21] qei si nous ne sumes pas *P*; *sim. Q*, *but* fumes. [22] mes *P*, *Q*. [23] pernetz *Q*. [24] W. *Q*.

Toudeby. You see how the certification was awarded by the Justices assigned to take the assize, and the [certification] has not been taken. We pray you to make the assize come back to inform the Court whether or not Agnes attorned to William while Alice was alive.

Malberthorpe. There is no need for the assize to return to be examined upon this point, for there is a complete verdict upon which the Court can well make a judgment. We pray judgment.

Toudeby. The right of the reversion of the tenements which Agnes held in dower cannot pass into the person of William by Alice's grant unless an attornment be made in the lifetime of Alice.[1] But we say that Alice died before Agnes attorned to William, so that the right never was divested from the person of Alice while she lived, in such wise that title of right could accrue to William by an attornment made to him after Alice's death. For if I make a charter of certain tenements [to you], and after my death you put yourself 'in' without livery of seisin, your estate is by law defeasible, so that my heir shall have the mort d'ancestor after my death. So here, notwithstanding any grant that Alice made etc. And, since William never had an estate by attornment etc. while Alice was alive etc., we do not believe that you will go to judgment without being certified of this point.

Malberthorpe. There is no need to have a certification of this point, for your title that you made in pleading is fully defeated and our title is found true as we alleged it; so the verdict is complete. Besides, you are not the person who could take advantage by the non-attornment of Agnes, even if the case were as you state it, for you are not Alice's heir who might affirm right in her person. Wherefore etc.

Herle. It may be that Alice's heir has released and quitclaimed to us etc. all his right etc., and in that case our right might be lost if we could not be a party to try this attornment. Wherefore etc.

Brabazon, C. J. You cannot be in a better condition than that in which Alice's heir would be after the attornment; for we find by record that you took your title from one John of Merton, who enfeoffed

[1] For the general principle that to make the grant effectual the tenant must attorn while both the grantor and the grantee are living, see Co. Lit. 309a.

ovesqe autres tenemenz enfeffa un Robert vostre predecessour. Après la mort Johan, Alice sa femme fut dowé des tenemenz mis ore en vewe et en pleinte.[1] Après qi mort vous entrastes com celui a qi la reversion append.[2] Le quel title est pleinement anynty[3] par verdit de assise; qar nous trovoms qe Johan[4] de Mertone morust seisi, après qi mort ceux iij. filles entrerent et donerent a lour miere en dowere[5] tenemenz qe sount ore en debat; la reversion de queux tenemenz fut alloté a Alice en sa purpartie; la quele Alice mesme la reversion granta a W.; par quel grant A.[6] se atturna; et issint trovoms le title W.[7] tut verroy. Par qei nous ne savoms mye[8] veer, del hure qe vostre dreit est anenty par ceo verdit, qe vous poez mesme eyder[9] par autre dreit, la ou le dreit n'est doné par le verdit a nul autre qe a cesti q'ore se pleint, ne coment vous poiez[10] ceo jugement targer.

Fris. Si W. fut ore einz, et le heir Alice portast bref de intrusion vers lui, et il en response dit qe[11] Alice, qi heir il est, granta[12] la reversion, par quele grant A.[13] se atturna etc., si[14] le demandant put[15] averrer qe A.[16] ne se atturna point vivaunt sa miere, il defreit le grant et recovereit seisine de terre; qar par atturnement fet après la mort celui qe se granta,[17] dreit ne se put vestir,[18] qar[19] mester serreit d'enquerre de ceo point.

Brab. Si W. fut ore einz, et bref de intrusion fut porté vers lui,[20] et il eust sa chartre de grant[21] en poygne, et ust tel manier de atturnement com vous avez dit, fort serreit de lui ouster. Estre ceo, vous ne serrez[22] de[23] tiel condicion com serreit l'eir del hure qe vostre estat est defet et trové est diseisine. Et pur ceo agardez voz jugements.

{*Herle.*[24] Il put estre qe le heir Alice eit relessé a nous.

Ber. Ceo ne poums pas entendre de pus qe vous avet clamé par altre title qel est defet. Par qei qaunt a vous nous n'enquerroms plus. (Et rendi jugement pur W.)}

[1] *Om.* et . . . pleinte *P*, *Q*. [2] apendoit *P*; appent *Q*. [3] anyenty *Q*. [4] W. *Q*. [5] et lour mere dowerent de lez *P*; *sim.* *Q*. [6] Agnes *Q*. [7] *Om.* W. *P*, *Q*. [8] *Om.* mye *Q*. [9] puissez vous eyder *P*. [10] pussez *P*. [11] intrusion et le tenaunt deise qe *P*. [12] Alice li graunta *P*. [13] graunt la femme *P*. [14] et *P*. [15] poeyt *P*. [16] que la femme *P*. [17] *Ins.* le *P*, *Q*. [18] *Ins.* en sa persone *P*, *Q*. [19] par qei *Q*. [20] cely *Q*. [21] gar' *P*. [22] *Ins.* pas *P*, *Q*. [23] par *Q*. [24] From the short version in *X*.

one Robert your predecessor of these and other tenements; and, [so you alleged], after his death Agnes his wife was endowed of the tenements that are now put in view and in plaint; and after her death you entered as he to whom the reversion belongs. [Such was the title alleged], and it is utterly annihilated by the verdict of the assize. For we find that John of Merton died seised, and that after his death these three daughters entered and gave their mother by way of dower the tenements that are in debate, and that the reversion of them was allotted to Alice in her share, and that Alice granted the reversion, and that on this grant Agnes attorned. Thus William's title is found true. Therefore, since your title is annulled by the verdict, we cannot see how you can aid yourself by the right that is in another, whereas by the verdict the right is not given to any other than the present plaintiff. We do not see how you can delay judgment.

Friskeney. If William were 'in,' and Alice's heir brought a writ of intrusion against him and [William] said in answer that Alice, whose heir [the hypothetical demandant is] granted the reversion to him [William], and that on that grant Agnes attorned herself etc., then, if the demandant could aver that Agnes did not attorn in her [daughter's[1]] lifetime, [the demandant] would defeat the grant and recover seisin of the land; for the right cannot vest itself by means of an attornment made after the death of the grantor. So there would be need for an inquest at this point.

Brabazon, C. J. If William were now 'in,' and a writ of intrusion were brought against him, and he had his charter of grant in hand and had received such an attornment as you mention, it would be a strong thing to do were we to oust him. However, you are not in the situation in which [Alice's] heir would be, since your estate has been defeated and a disseisin has been found. Therefore await your judgments.

{*Herle.*[2] It may be that Alice's heir has released to us.

Bereford, J. But we cannot suppose that, since you have claimed by another title which has been defeated. Therefore at your instance we shall not make further inquiry. (And he gave judgment for William.)}

[1] The text has 'mother's'; but a correction seems necessary.
[2] From a short abstract of the case.

135. ANON.[1]

Novele diseisine, ou quiteclame fut fet en la seisine celi qe tint par statut de marchant, et puis le dettour ly paya, et entra. Il porte l'assise.

Un J. et sa femme porterent une assise de novele diseisine vers un N. et mostrerent[2] en lour vewe et en lour pleynte ij. mies en N. etc. N. com tenant dit qe R. son piere morust seisi de ceux tenemenz, après qi mort il entra com fiz et heir et[3] ore est eynz, et n'entendoms mye qe assise deive estre sanz ceo q'il mostrent coment il furent seisiz etc.

Toud. C'est[4] une mauveise coonsequent 'vostre pere morust seisi e vous entrastes com fiz et heir et ore estez seisi *ergo* vous nous diseisismes point. Jugement.'[5] Vous avez mester a dire coment vous avet franc tenement[6] depus q'il vous surmet la diseisine.

Hunt. Sire, nous vous dioms qe J., qe porte ore cesti bref[7] ensemblement ov sa femme, n'aveynt[8] rien en ceux tenemenz si noun par forme de[9] statut a tenir en noun de frank tenement, taunqe il fut paié de x. marcs, qe cely devoit par reconisaunce fete devaunt les gardeynz de[10] statut de Londrez; dount mesme cesti N. aprocha l'avantdit J. e fit son gree de l'avantdite dette, et prist de ly une acquitance de mesme la dette; par my quele acquitance ceu[11] franc tenement fut defet; et veet[12] si l'aquitance qe testmoigne la seute.[13] Jugement, si assise deive estre sanz ceo q'il mostrent title de franc tenement de plus tardif temps.

Toud. Nous vous dioms qe vous mesme en nostre seisine grantastes[14] e quiteclamastes a nous et nostre femme mesmes ceux tenemenz par ceu fet, par my quel fet nous sumes[15] seisi tanqe par vous disseisi; et prioms l'assise. (Et mist avant le fet qe fut tiel: 'concessi, remisi, et quietum clamavi J. et B. uxorem[16] eius etc.')

Pass. Nous prioms adeprimes q'il grante le fet[17] ou qe la court le tiegne grantee.

Ing. Nous le tenoms a granté.

Pass. Nous avoms dit qe J. n'avoit rien en ceux tenemenz si noun par forme de statut par reconisance fete a ly soul; la quele il ad ore

[1] Not in *Vulg.* Text from *R*: compared with *P*, and a short note in *X*. Head note from *P*. [2] mistrent *P*. [3] *Om.* et *R*. [4] Ceste *R*. [5] *Om.* jugement *P*. [6] coment franctenement vous est acru *P*. [7] ceste assise *P*. [8] navoit *P*. [9] *Om.* de *R*. [10] le gardeyn del *P*. [11] *Om.* ceu *P*. [12] voyez *P*. [13] southte *P*. [14] rel' *P*. [15] fumes *P*. [16] uxori *P*. [17] *Ins.* ou desdie *P*.

135. ANON.

The nature of the estate of a tenant by statute merchant considered. In the novel disseisin a plaintiff offers the defendant's deed in evidence of title. Can the defendant plead that the deed is not his and confine the issue to that point?

One J. and his wife brought an assize of novel disseisin against N. and put in their view and their plaint two messuages in [X.] etc. N. as tenant said that R. his father died seised of those tenements, and that on [his father's] death he [N.] entered as son and heir and now is 'in'; and [said he] we do not think that an assize should be taken unless they show how they were seised etc.

Toudeby. It is inconsequential to say that your father died seised and that you entered as son and heir and now are seised and that therefore you did not disseise us [and that therefore you demand] judgment. Since [the plaintiffs] surmise a disseisin against you, you must show how you have a freehold.

Hunt. Sir, we tell you that J., who along with his wife now brings this writ, had nothing in these tenements except by Statute [Merchant, under which he had the right] to hold them in the name of freehold until he was paid ten marks which [the defendant] owed to him on a recognisance made before the wardens of the Statute in London; and that [the defendant] approached him and made accord with him for the said debt and took an acquittance for the same; and that by that acquittance that freehold is undone. See here the acquittance which testifies the payment. Judgment, whether there ought to be an assize unless [the plaintiffs] show a title of freehold of some later date.

Toudeby. We tell you that you yourself granted and quitclaimed these tenements in our seisin to us and our wife by this deed, by which deed we were seised until disseised by you; and we pray the assize. (He put forward a deed which ran—'I have granted, remised, and quitclaimed to J. and B. his wife etc.')

Passeley. We pray that he will confess or deny the deed, or that the Court will take it for granted.

Inge, J. A.[1] We take it for granted.

Passeley. We have said that J. [the male plaintiff] had nothing in these tenements save by the form of the Statute by a recognisance

[1] William Inge, afterwards C.J.B.R., was at this time frequently commissioned as a justice of assize.

conu; e ore se pleynt ov sa femme [1] cum si ele fut [2] joynt en le franctenement et en la reconisance. Jugement du bref.

Ing. Ceo n'est mye proprement franctenement, qar le creansour n'ad rien si noun a terme des aunz, coment q'il tigne en noun de franctenement par forme de statut, issi qe le dettour porra bien fere franctenement [3] dens le terme a ly et a sa femme. Par qey nous agardoms le bref bon. Et d'autrepart, de pus q'il cleyment ore franctenement par cele especiauté, par my cele clame il se demet del franctenement q'il avoit par forme de statut.[4]

Pass. Conu est d'une part et d'autre qe ceux tenemenz vyndrent [5] en la possession J. a tenir en noun de franctenement; le quel franctenement fut defet par my l'acquitance; et ore cleyme il franctenement joynt ov sa femme par une quiteclame; la vous dioms qe ce n'est mye nostre fet.

Toud. A ceo n'avendrez mye a dedire le fet, eynz covent il qe vous traversez nostre pleynte qe nous fumes unqes seisi parmy ceu fet com de franctenement. Mès [6] si nous fusoms tenant et nous meisoms avant la quiteclame contre vous come barre, donqe girreit il bien a dedire le fet. Mès depus qe nous le mettoms si noun en prove et en evidence de nostre title, vous ne serrez mye receu a dedire le fet, nent plus qe si [7] nous usoms mys [8] avant chartre en prove de nostre franctenement.

Ing. La seisine est conu d'une part et d'autre. Par qey n'est mye mester de joyndre l'assise sur ceo q'est conu, dount rien ne chet en debate si noun le fet. Par qey vigne l'assise etc.

136. ANON.[9]

Eschete. Prier estre receu.

Un A. porta bref d'eschete vers B., que fit default après default. Survint un Jon et dit qe B. n'avoit [10] en ceux tenemenz si noun terme de vie du lees M. sa aunte,[11] qe heir etc., et la reversion a ly apent; et pria d'estre [12] resceu etc.

[1] *Ins.* joynte *P.* [2] en supposaunt qele est *P.* [3] *Ins.* par cele especialte *P.* [4] Ing. La ou le baron nad qe chatel relesse put fer fraunctenement a li et a sa femme. Par qei nous agardoms le bref bon. *X.* [5] devyndrent *P.* [6] *Ins.* ore *P.* [7] *Om.* si *R.* [8] nous meisoms *P.* [9] Not in *Vulg.* Text from *R*: compared with *P*, *L.* [10] *Ins.* rienz *P.* [11] lees Emme sa auncestre *P.*; sa aunc' *L.* [12] et prit demandee estre *R*; et prie de estre *L.*

made to him alone, and this he has now confessed, and now he complains along with his wife as if she were joined with him in the freehold and the recognisance. Judgment of the writ.

Inge, J. A. Properly speaking [the estate given by the Statute] is not the freehold, for the creditor has nothing but a term of years, though he holds in the name of freehold by the form of the Statute, so that during the term the debtor might well make a freehold to him [the creditor] and his wife. So we award the writ good. And again, since [the plaintiffs] now claim freehold under this specialty [the quitclaim], by that claim [the male plaintiff] demits himself from the freehold that he had by the form of the Statute.

Passeley. As it is allowed by both parties that these tenements came into the possession of [the male plaintiff] in the name of freehold, and this freehold was defeated by the acquittance, and he now claims a freehold jointly with his wife under a quitclaim, we tell you that [the quitclaim] is not our deed.

Toudeby. To a denial of the deed you cannot get. Rather you ought to traverse our plaint [by saying] that we were never seised as of freehold by means of this deed. If we were tenant and put forward the quitclaim against you as a bar, then a denial of the quitclaim would lie well enough in your mouth; but as we are only putting forward [this quitclaim] by way of proof and evidence of our title, you shall not be received to deny the deed, no more than you should be received to deny a charter [of feoffment] if we had put one forward in proof of our freehold.

Inge, J. A. The seisin is confessed on the one side and on the other. Therefore there is no need to join the assize about a matter that is confessed, when there is nothing that falls into debate except [the execution of] the deed. So let the assize come etc.

136. ANON.

Escheat. Receipt of an intervener.

One A. brought a writ of escheat against B., who made default after default. One John intervened and said that B. had only a term for life in those tenements by the lease of M. [John's] aunt, whose heir [John is], and the reversion belongs to him [John]; and he prayed to be received [to defend his right].

Lauuf. M.,[1] qe heir vous estes, ne fut unqes enherité de ceux tenemenz, prist etc.

Stauntone. A cel averement ne serrez resceu. Mès pernez l'averement, si vous volez, qe M.[2] ne fut unqes seisi issi q'ele pout lees fere.[3]

Lauuf. Estoise etc.[4]

137. ANON.[5]

Nuisance.

Herle fit un protestacion a la court qe le vicounte avoit retourné en bank une enqueste en un bref de nusance, q'il enquyt[6] de la nusance; qel chose nous avoms[7] pas avant vewe, sicome en bref de wast q'est doné par statut; par qey nous prioms qe vous nous diez vos avisemens.[8] Estre ceo, le bref, qe fust garant a vicounte de ceste enqueste prendre, veut q'il alast en propre persone, et ceo ne fit il poynt, par qey etc. Estre ceo, toux iceux de l'enqueste deivent estre terre tenants, et vous dioms qe R., M., et S. qe sont de cele enqueste ont[9] nule terre. Estre ceo, le garnisement veut[10] estre fet a cely vers qe l'original est[11] porté; ore fut le garnisement fet al atourné. Et pur ceo qe statut ne doune mye tel procès en cesti bref d'anusaunce[12] auxi com en bref de wast, *per consequens* sanz garant, par qey fut agardé qe[13] tut le procès[14] fut anenti et q'il seuwit[15] un[16] *ut prius.*

138. ANON.[17]

Entré *ad terminum qui preteriit*, ou chartre fut mys avaunt, et a ceo fet fut chacé a respoundre.

Un A. porta bref d'entré[18] vers B., en les quex il n'ad entré si noun par[19] le lees qe S. uncle A., qe heir il est, de ceo[20] en fit a Richard de N. a terme qe passé est.

[1] Emme *P.* [2] Emme *P.* [3] far' *R.* [4] Estoise laverement *P, L.* [5] Not in *Vulg.* Text from *R*: compared with *P, L.* [6] enprist *L.* [7] navoms *P, L.* [8] vostre volunte *P, L,* [9] nount *P*; ne unt *L.* [10] deit *P, L.* [11] fut *P.* [12] de nusaunce *L.* [13] *Om.* com . . . qe *P.* [14] nusaunce ceo proces *L.* [15] qe il fut *L.* [16] *Om.* un *P.* [17] Not in *Vulg.* Text from *R*: compared with *P, Y.* Headnote from *P.* [18] *Ins.* ad terminum qui preteriit *P.* [19] pur *R*; puis *P.* [20] *Om.* ceo *R.*

Laufer. M., whose heir you are, was never inherited [1] in these tenements. Ready etc.

Stanton, J. You shall not be received to that averment. But, if you please, you can take the averment that M. was never so seised that she could make a lease.

Laufer. Let the averment [that you suggest] stand.

137. ANON.

Procedure in an action of nuisance. Inquest taken by the sheriff.

Herle made a protest to the Court. The sheriff had made a return to the Bench of an inquest in a writ of nuisance, to the effect that he had inquired of the nuisance. And [said *Herle*] such a thing we never saw before, [that an inquest should thus be taken] as if it were in a writ of waste where [the inquest] is given by Statute: so we ask your opinion. Besides, the writ which was the sheriff's warrant to take this inquest tells him to go in his proper person, and that he has not done; wherefore etc. Besides, all the men on the inquest ought to be landholders, and we tell you that R., M., and S., who were on this inquest, have no land. Moreover, the warning [to attend the inquest] should be given to the person against whom the original writ is brought, and here the person warned was the attorney. And because Statute gives no such process in a writ of nuisance as it does in a writ of waste, and consequently the [sheriff's proceedings] were without warrant, it was awarded that the process was annulled and that [the applicant] should sue an *ut prius*.

138. ANON.

Entry *ad terminum qui praeteriit.* The tenant relies on a charter of feoffment made by the demandant's ancestor. The demandant is driven to plead *Non est factum.*

One A. brought a writ of entry against B. [saying] 'into which he has not entry save after (*post*) the lease which S. (A.'s uncle), whose heir A. is, made thereof to Richard of N. for a term that has expired.'

[1] A less literal translation might be too definite.

Rust.[1] La ou il dit qe S. uncle A., qy heir etc., lessa ceux tenemenz a Richard a terme, il ly enfeffa en [2] fee par ceste chartre et obliga etc.[3] et [4] si nous fusoms enpledé d'un estrange etc. qe nous sumes assigné Richard. Jugement, si action puisse il avoir.

Toud. Vous estes a travers [5] nostre bref et [6] nostre action, qe S. lessa a Richard [7] a terme etc. prist etc.

Rust. Est ceo le fet vostre auncestre ou noun ?

Et fut chacé par la court a respondre a le fet. Et sic fecit, et dit qe nent son fet. (Eodem modo in intrusione si tenens dicat quod ille de cuius morte etc. habuit feodum et ostendat factum petentis vel antecessoris, ut infra termino Trinitatis tercio anno.[8])

139. ANON.[9]

Dower, vers baroun et femme. Le baroun fet defaute et sa femme est receue, et dit q'ele ne tient forsqe taunt.

Une Amore [10] porta son bref de dower vers un homme et sa femme. Le baron fit defaut. La femme fut resceu.[11]

Ass. La ou ele demande la terce parte de x.[12] s. de rente, nous ne sumes tenant forqe de v.[13] s. etc., et de ceo ne deit ele douwer avoir, qar Huwe son baron, de qy etc., ne fut pas seisi jour qe [14] la esposa [15] ne unqes pus [16] si [17] qe douwer pout, prist etc.

Lauuf. Seisi etc. prist [18]; e qaunt a remenant nous prioms seisine etc.

Scrop. Vers qy recoverez vous seisine ? Vers la femme ne mye, qar ele dit q'ele ne tent forqe v.[19] s. Vers le baroun ne mye, qar vous avez affermé joyntenance en lour [20] persones. Par qey si vous volet rien recoverer, il covent qe vous affermez [21] q'ils furent tenanz jour du bref purchacé, prist etc.

Et alii econtra.

[1] Scrop. *P.* [2] il lessa en *P.* [3] *Om.* et . . . etc. *P.* [4] *Om.* et *R.* [5] *Ins.* a *P.* [6] *Ins.* a *P.* [7] *Ins.* en fee qe *P.* [8] *Om.* Eodem . . . anno *R.* *In P this appears as part of the text. In Y the case ends thus*: 'Et a conustre ou dedire fust il chacé par Hervy. Toud. Nent son fet, prest etc. Et alii econtra.' [9] Not in *Vulg.* Text from *R*: compared with *P*, *L*. Headnote by editor. [10] Elianore *L.* [11] *Om.* vers . . . resceu. *P*, *L.* [12] xl. *P*; lx. *L.* [13] xxx. *P* l. *L.* [14] qil *P*, *L.* [15] espose *R.* [16] apres *P.* [17] issi *L.* [18] *Ins.* etc. *P*, *L.* [19] xxx. *P*; les l. *L.* [20] *Ins.* ij. *P*; deux *L.* [21] averez *P*; averet *L.*

Ruston. Whereas he says that S., A.'s uncle, whose heir he is, leased these tenements to Richard for a term, [we tell you that S.] enfeoffed [Richard] in fee by this charter and obliged [himself and his heirs to warranty], and if we were impleaded by a stranger [you would be bound to warrant us], for we are the assign of Richard. Judgment, whether you can have an action.

Toudeby. [In effect] you have traversed our writ and our action. Ready to aver that Richard leased for a term etc.

Ruston. Your ancestor's deed, yes or no?

He was driven by the Court to answer to the deed. And he said 'not his deed.' (In the same manner in a writ of intrusion, if the tenant says that the person on whose death the action is brought had a fee and produces a deed of the demandant or his ancestor: see below in a case of Trinity term in the third year.)

139. ANON.

Dower against husband and wife. The husband makes default. The wife is received and pleads a partial non-tenure.

One A. brought her writ of dower against husband and wife. The husband made default. The wife was received.

Assheley. Whereas she demands the third part of twenty shillings' worth of rent, we only hold five shillings' worth, and of that she ought not to have dower, for her husband, on whose [endowment she claims], was never seised so that he could endow her. Ready etc.

Lauf. Seised etc. Ready etc. As to the residue, we pray seisin etc.

Scrope, J. Against whom shall you recover seisin? Not against the wife, for she says that she only holds five shillings' worth. Not against the husband, for you have affirmed a joint tenancy in their persons. Therefore, if you wish to recover anything, you must affirm that they were tenants on the day of writ purchased, and say that you are ready [to aver it.]

Issue joined.

140. ANON.[1]

Resumounce.

Richard de la Rokele sewyt une resumonce, qe[2] veut[3] qe la parole[4] seit devant vous en mesme l'estat q'ele fut au mois[5] de Pasche l'an etc. xxxv. Sire, nous avoms[6] nul jour a moys de Pasche, eynz a v. simeyns. Par qey fut dit q'il sewyt[7] autre resumonce *si viderit expedire.*

141. COVENTRY (PRIOR OF) *v.* GRAUNTPIE.[8]

Discussion of the form of the writ in a case in which market rights are infringed, and of the necessity of stating the nature of the damage that the plaintiff has suffered by the infringement.[9]

Le Priour de Coventré porta son bref de trespas vers W. Grauntpé[10] et autrez etc., et counta qe W. et les altrez a tort, com le dit Prior avoir deit et toux les predecessors mesme cesti Prior de temps dount n'y ad memorie sa en arrere[11] soleynt avoir lour marché en la ville de C. en un certeyn liu qe homme appelle Prioreshalf,[12] c'est a savoir, chescun simeyne le venderdi par tut l'an issi qe nul march[and] en mesme la ville nul part[13] alleurs[14] en mesme la ville,[15] vendront lour marchandises forqe en le leu avantdit, la sunt l'avantdit W. et les autrez només en bref ja de novel venuz et ount lour mies[16] et lour marchand[ises] vendu, scil. drap, cendel, espicerie[17] et autrez maneres du mers et de marchandise[18] aillours en mesme la ville en un certeyn liu qe homme appelle Erleshalve[19] de[20] lundi prochein après la feste etc. l'an etc. tanqe a jour de cesti bref purchacé ; par reson de quele vente mesme cesti Prior ad perdu estallage etc.[21] a tort et a ses[22] damages etc.

Malm. defent et dit qe la chose dount il sount endamagés[23] est la cause qe lour doune action a damages recoverer, et ceo est pur ceo

[1] Not in *Vulg.* Text from *R*: compared with *P*, *L*. [2] *Om.* qe *R*. [3] un resomounse. Frisk. La resomounse veut *P* ; *sim. L*. [4] partie *P*, *L*. [5] meyns *L*. [6] naveymes *P* ; navoms *L*. [7] suist *P* ; swit *L*. [8] Not in *Vulg.* Text from *R*: compared with *P* and a short version in *X*. [9] No French note has been found. [10] Grauntpee *P* ; Graumpe *X*. [11] *Om.* sa . . . arrere *P*. [12] Prioreshayl *P* ; Priorshal *X*. [13] *Om.* nul part *P*. [14] *Ins.* qe la *P*. [15] *Om.* en . . . ville *and ins.* en nule part *P*. [16] *Corr.* mers (?) ; mees *P*. [17] draps, espicerie, centurie *P*. [18] et autrez de ditz marchandisez *P*. [19] Erlyshall' *P*. [20] del *P*. [21] estallage, cotage, terrage *X*. [22] ces *R*. [23] *Malm.* La akate dount il fut endam[age] si *P*.

140. ANON.

Resummons.

Richard de la Rokele sued a resummons. *Friskeney* said: The resummons orders that the suit is to come before [the Court] in the state in which it was a month after Easter in 35 [Edw. I.]. But, Sir, the day that we had was not Easter month but Easter five weeks. So the other party was told to sue another resummons if he thought fit so to do.

141. COVENTRY (PRIOR OF) *v.* GRAUNTPIE.

Can a religious house prescribe to have a market? Does the grant of a market involve a right extending over the whole vill, even when some portion of the vill is expressly mentioned?

The Prior of Coventry brought his writ of trespass against W. Grauntpé and others, and counted that, whereas the said Prior ought and all his predecessors from time immemorial until now have used to have their market in the town of C[oventry] in a certain place called the Prior's Half, to wit, on Friday in every week throughout the year, in such wise that no market [should be holden] in the same town, and that no one should elsewhere in the same town sell his merchandise save in the market aforesaid, the said W. and the others named in the writ have of late come and sold their wares and merchandise, to wit, cloth, cendal, spicery and other manner of wares and merchandise elsewhere in the same town in a certain place called the Earl's Half from the Monday after the feast etc. in the year etc. until the day of the purchase of this writ, by reason of which sale the said Prior has lost stallage, terrage and cottage etc., wrongfully and to his damage etc.

Malberthorpe[1] defended and said that the matter in which [the Prior is] damaged is the cause which gives him an action to recover

[1] Observe a shorter version of this speech given among our variants. 'In your count you assign loss of stallage, cottage, and terrage as the cause for recovering damages, and of this your writ says nothing. Judgment of the writ.'

q'il ount perdu[1] cotage et terrage, et de ceo n'ount il fet nul mentioun en lour bref. Par qey nous demandoms jugement du bref.[2]

Herle. Nostre bref veut qe vous estes de novel venuz et avet march[andé] en le liu[3] avantdit en mesme la ville,[4] issi par reson de cel march[andise] nous sumes endamagés. Jugement, si nostre bref ne seit asset bone.

Frisk. Par reson de march[andise] ne poet assigner qe vous eiez nul piert, mès[5] tauntsoulement pur ceo qe vous avez perdu cotage et terage, de qy vous ne fetes nul mentioun en vostre bref. Jugement.

Ber. Le gros de sa actioun est pur ceo qe vous avet vendu hors de son marché. Par qey il ad perdu le[6] profit etc.[7] Issi est le march[andise] le gros de qey[8] sa actioun sourde.

Herle. Si je usse un marché en une certeyn ville, et un autre ust levé un marché[9] anusaunt a[10] mon marché de près cele ville, jeo porterai[11] bref d'anusaunce; et dirrai en mon bref 'iniuste levavit quoddam mercatum ad nocumentum liberi mercati mei'; et si[12] ne assignerai jeo mye autrement[13] cument jeo fu[14] endamagé, et le bref serreit bon. Auxi par de sa.

Malm. Uncore demandoms jugement de cesti bref; qar cesti bref est porté vers divers persones en affirmaunt[15] owel trespas en ceux,[16] et issi[17] receyvereit[18] damages en owel portioun,[19] ou par cas ascuns unt fet greignour[20] trespas, ascun meyndre. Jugement.

Ber. Tut seit ceo issint q'il eit counté[21] en comune, vous porrez severer vostre r[espouns], et solum ceo qe chescun serra coupable trové si serra il puny. Par qey dites outre.

Malm. La ou il dit qe ly et ses[22] predecessors ount eu[23] marché et qe nulz march[andises] devereynt estre venduz par venderdy parmy tut l'an forqe en Priourshalf, dount[24] nous l'avoms sustret, a[25] ceo q'il[26] dit, de novel, nous vous dioms qe nous et nos auncestres et[27] les terres tenantz, qe[28] estat nous avoms, ount huy[29] et usé du temps dount il[30] n'i ad memorie de vendre en cele party de la ville de C., scil. en le Erleshalve,[31] toutes maneres de march[andises][32] scil. seyez, sendels etc.[33] chescun jour de la symayne a nos voluntés auxi bien les

[1] ceo est la perte (?) de *P.* [2] *Malm.* Perde de estallage, cotage et terrage assignez vous en countant pur cause de recoverir damages, de qei vostre bref ne fet pas mencion. Jugement du bref *X.* [3] bi (?) *R*; lieu *P.* [4] *Ins.* et *P.* [5] assigner si noun *P.* [6] *Om.* le *P.* [7] *Om.* etc. *P.* [8] gros dount *P.* [9] un altre *P.* [10] de *P.* [11] marche en tel cas javerey moun *P.* [12] *Om.* si *P.* [13] en nule autre manere *P.* [14] sui *P.* [15] et aferme *P.* [16] lour persones *P.* [17] *Ins.* suppos' a *P.* [18] recovereys oweles *P.* [19] *Om.* en . . . portioun *P.* [20] seignour *R*; greyndre *P.* [21] *Ber'* Il ount counte *P.* [22] ces *R.* [23] *Ins.* lour *P.* [24] *Om.* qe nulz . . . dount *P.* [25] *Om.* a *P.* [26] *Om.* qil *P.* [27] *Ins.* touz *P.* [28] qi *P.* [29] *For* eu *R*; eu *P.* [30] i *R.* [31] Erlyshall' *P.* [32] merceriez *P.* [33] *Om.* scil. . . . etc. *P.*

damages, and that matter is the loss of 'stallage, cottage and terrage,' and yet of this he has made no mention in his writ. Wherefore we demand judgment of the writ.

Herle. Our writ says that 'of late you have come and have marketed in the said place [the Earl's Half] in the same town, so that by reason of this marketing we are damaged.' Judgment, whether our writ be not good enough.

Frisk. You cannot assign any loss suffered by you by reason of our marketing; your only damage is the loss of 'cottage and terrage,'[1] and of this you make no mention in your writ. Judgment.

Bereford, J. The sum and substance of his action is that you have been selling outside his market, whereby he has lost profit etc. So the marketing is the main cause whence his action arises.

Herle. If I have a market in a certain town and another has levied a market in the neighbourhood to the nuisance of my market, I can bring my writ of nuisance and shall say in my writ 'unlawfully he levied a certain market to the nuisance of my market,' and I shall not otherwise assign the manner in which damage has been done me, and the writ will be good. So here.

Malberthorpe. Once more we demand judgment of this writ, for it is brought against divers persons and affirms an equal trespass in all of them, and thus [the Prior] might receive an equal amount of damages from all, whereas it may be that one has done a greater and another a less trespass.

Bereford, J. Albeit he have counted [against them all] in common, you can sever your answers, and each will be punished according to that of which he is found guilty. So plead over.

Malberthorpe. Whereas he says that he and his predecessors have had a market, and that throughout the year no merchandise ought to be sold on Friday elsewhere than in the Prior's Half, and that of late we have been guilty of subtraction, we tell you that we and our ancestors and the landholders whose estate we have, have been used and wont from time immemorial to sell all manner of merchandise, to wit, silk, cendal etc. in the part of the town of C[oventry] which is called the Earl's Half on every day of the week, as well on Fridays as on

[1] The count as recorded (see below) speaks only of 'the profit of letting stalls etc.'

venderdiz cum les autres jours sanz venir a marché le Priour[1] si biel ne nous fut.

Brab. La ou le Roy grante[2] marché a nul homme, il ly grante marché issint qe nul homme deit[3] en mesme la ville ou le marché est nul march[andise] vendre, forqe[4] en le[5] marché. Dount depus qe vous avez conuz[6] qe le Priour ad marché en cele ville par grant du Roy et vous receaunt[7] en mesme la ville, comune ley vous chacera de venir a son marché sanz aillours marchander en mesme la ville

Scot.[8] Par deus resons ly osteroms[9] de ceste demande; qe, la ou il allege prescriptioun de temps, nous sumes contraire a ceo, en taunt qe nous dioms[10] qe nous et nos auncestres etc. *ut prius* ount vendu auxi bien par venderdi cum par autre jour de la symeyne saunz avoir regarde a son marché. L'autre reson est qe le marché q'il ad du grant le Roy ne lye nul veisin de venir a son marché, n'yl[11] afferme[12] seignurie sur nous de temps dount yl n'y ad memorie forqe ore de novel, ne especiauté ne mostre par qey devoms a son marché venir. Jugement.

Scrop.[13] Si le Roy vous ust granté marché saunz especifier[14] nul certein place en la ville, put estre qe vous aviet ascun r[eson][15] d'atrere[16] toux ceux de la ville a vostre marché sanz marchander par aillours en mesme la ville a tiel jour; mès, depus qe vous n'avet marché forqe en certeyn place en mesme la ville, atrere[17] ne poet par title de droit nul homme forqe ceux de mesme la parcele[18] ou le marché est, qar a cele parcele ou vous clamet le marché, il[19] sont hors de vostre[20] jurisdictioun. Par qey par la chartre le Roy[21] vous ne les poet lier.[22] Par qey, si vous volet rien par vostre bref recoverer, il covent qe vous affermet custume.[23]

Herle. Depus qe vous ne poet dedire[24] qe vous n'estes[25] franc burgeys le Roy, et vous ne mostrez nul especiauté par qey vous estes[26] exemptes, ne vous ne poet dire[27] qe vous eiez[28] meir ou[29] comune seal en cele partie de la ville,[30] scil. en Erleshalf[31] et vous avet[32] granté qe nous avoms marché, jugement.

Scrop. Gentz de religion n'ount rien par conqueste, mès tut du grant le Roy, le quel grant est a nuli prejudiciel en tiel cas. Par

[1] marche de Priorishall *P.* [2] ad graunte *P.* [3] homme ne soit *P.* [4] est en [eit?] marche fors *P.* [5] cel *P.* [6] *Om.* vous . . . conuz *P.* [7] resseaunt *P.* [8] Ston. *P.* [9] li voloms oster *P.* [10] e taunt come demande (?) *R.* [11] veisin ne il *P.* [12] *Ins.* nule *P.* [13] Stan. *P.* [14] nomer *P.* [15] askune cause *P.* [16] de attreer *P.* [17] attreer *P.* [18] place *P.* [19] *Om.* il *R.* [20] *Om.* vostre *P.* [21] *Ins.* par la quele vous etc. *P.* [22] il estre lye ne poount *P.* [23] custume lyer *P.* [24] dire *P.* [25] estes *P.* [26] soiez *P.* [27] *Om.* dire *R.* [28] avez *P.* [29] en *R.* [30] *Ins.* de Covyntre *P.* [31] Erlishall' *P.* [32] navet *R*; avez *P.*

other days, at our pleasure, without going to the Prior's market unless we thought fit so to do.

Brabazon, J. Where the King grants a market to a man, he grants a market in such wise that no man may, in the same town in which the market is, sell any merchandise save in the market. So, since you have confessed that the Prior has a market in this town by the King's grant[1] and that you are resident in the same town, common law will drive you to his market and prevent your marketing elsewhere in the same town.

Scoter. We shall oust him from his demand by two reasons. Whereas he alleges prescription, we contradict him inasmuch as we have said that we and our ancestors etc. (as above) have sold as well on Fridays as on other days of the week without having regard to his market. The other reason is that the market which he has by the King's grant binds no neighbour to come to his market, and he affirms no lordship over us from time immemorial, but only of late, and he shows no specialty by reason whereof we should go to his market. Judgment.

Scrope, J.[2] If the King had granted you a market without specifying any certain place in the town, may be you would have had some cause to draw to your market all the men of the town without their marketing elsewhere in the town; but, since you only had a market in a certain place in the town, you cannot by title of law draw to it anyone except those of that parcel where the market is; for those who are not of that parcel in which you claim a market are out of your jurisdiction. So you cannot bind them by the King's charter. Wherefore, if you wish to recover anything by your writ, it behoves you to affirm a custom.

Herle. Since you cannot deny that you are not the King's free burgesses, and you show no specialty which makes you exempt, and you cannot say that you have mayor or common seal in that part of the town, to wit, the Earl's Half, and you have confessed that we have a market, [we demand] judgment.

Scrope, J. Men of religion have nothing by conquest[3]; all [the franchises that they have come] from the King's grant, and in cases

[1] But we do not learn from the report or the record that the Prior has relied on a charter.

[2] Perhaps not the justice but his brother.

[3] The doctrine that franchises can be prescribed for only by those whose ancestors may be supposed to have won them by their strong right arms is not unfrequently stated in cases of *quo waranto*. See Pollock and Maitland, Hist. Eng. Law, vol. i. p. 560.

qey si vous les voillez fere venir a vostre marché il vous covent mettre avant especiauté de grant le Roy.

Note from the Record.

De Banco Roll, Hilary 2 Edw. II. (No. 174), r. 151.

William Graumpe of Coventry the elder, and others who are named, are summoned to answer the Prior of Coventry. The writ states that whereas the Prior ought to have, and he and his predecessors from time immemorial have been wont to have, a free market on Friday in every week in a place called Priorshalf in the town of Coventry, so that merchandise and other vendible goods ought not to be exposed or sold in the town except in the said place, the defendants with others who are named have of late (*de novo*) exposed and sold their merchandise and other goods on the said day in their houses and booths outside the said place. The count amplifies the statement: the defendants on Friday next after Michaelmas in 28 Edward I. and on subsequent Fridays until the purchase of the writ, namely 20 Jan. 35 Edward I., have of late (*de novo*) exposed for sale merchandise and other goods, to wit cloths, sindon, silk and belts (*pannos, sindonem, sericum et cinctoria*), in their houses and booths in a place called Erlestrete in the same town outside the place called Priorshalf, so that the Prior has lost his profit of the letting of stalls etc. Damages are laid at two hundred pounds.

The defendants confess that the Prior has a free market in Priorshalf on the day aforesaid; they confess also that they sell merchandise in Erlestrete, but not as a new practice (*set non de novo etc.*); for they say that Ranulf Earl of Chester was sometime lord of that part of the town of Coventry which is called Erlestrete, and by his charter granted to his men of that place that they should be burgesses and should use and enjoy in all respects the liberties which the burgesses of Lincoln used and enjoyed. They produce the Earl's charter which witnesses this. They also produce a charter of King Henry, father of King Richard, which confirms the said grant so far as it is reasonable. They add that at that time the Earl had in the said place a fair in every year on Friday next before the feast of the Trinity, and for eight days next following, and pillory and tumbrel to do judgment on transgressors of the assise of bread and beer, and his heirs had the same until Roger of Montalt and Cecilia his wife, one of the said Earl's heirs, in the time of Henry III. demised the said part known as Erlestrete to a predecessor of the Prior in fee farm.

The defendants add that they and their ancestors and their feoffors and their feoffors' ancestors holding the tenements which now they (the defendants) hold have from time immemorial, and also in the time of the said Earl and his ancestors, until now, sold and exposed in their houses and

of this sort his grant is prejudicial to no one. Therefore, if you wish to make them come to your market, you must put forward some specialty of the King's grant.

Note from the Record (*continued*).

booths constructed in the same place all their vendible merchandise on the Friday when the Prior has his market.

And the defendants, being asked whether they or any other have or claim to have market on Friday in Erlestrete, say No, but according to the aforesaid custom used from of old they and their ancestors have as aforesaid been wont to sell and expose for sale their merchandise in their houses and booths in such wise that they have not *de novo* done any injury to the Prior in this behalf. And the defendants, being asked by the Justices whether they put forward the said charters by way of title or by way of evidence of their aforesaid doing ('si ipsi porrexerunt predictas cartas pro titulo an pro evidencia facti sui predicti'), and whether they wish to hold to those charters for a title or to the said custom, say that they proffered the charters in evidence etc.

The Prior denies the selling from time immemorial: that practice has begun of late, as the Prior has complained.

Issue is joined. A *venire facias* is awarded. Process is continued until the morrow of the Purification 3 Edw. II., when the jurors come and say that the defendants and all others dwelling in Erlestrete and their ancestors and others formerly holding tenements in the said street have always hitherto sold their merchandise in the Prior's market of Priorshalf on Fridays when the Prior had his market, and not elsewhere in the town, until eight years ago the defendants began to sell in their houses and booths in Erlestrete, as the Prior complains, to his damage to the amount of sixty pounds. Judgment is given that the Prior recover his damages and that the defendants henceforth do not sell on Fridays in the said town elsewhere than in the said market. The terms of the judgment are worth giving in full:—'Et ideo consideratum est quod predictus Prior recuperet versus eos dampna sua predicta, et quod predicti Willelmus et alii decetero mercimonia sua venalia per dies Veneris quibus idem Prior habet mercatum suum predictum alibi in predicta villa de Coventre quam in predicto mercato suo non vendant seu vendicioni exponant etc. Et predictus Willelmus et alii in misericordia etc.' The damages are fixed at sixty pounds.[1]

[1] We can hardly say that the idea of an injunction was foreign to the common law. But could this mandate have any other effect than that of estopping the defendants from raising the same question over again? As to this case see Mary Dormer Harris, Life in an Old English Town (1898), p. 64, where the history of the Prior's Half and the Earl's Half at Coventry is related.

142. BARLINGS (ABBOT OF) *v.* VALLET.[1]

Quare impedit vers la persone del eglise.

Johannes filius Thome Vallet de Parva Hale summonitus fuit ad respondendum Abbati de Barlinges de placito quod permittat ipsum presentare idoneam personam ad ecclesiam de Cavenby iuxta Glentham, que vacat et ad suam spectat donacionem etc., et unde queritur quod predictus Johannes eum iniuste impedit. Et unde idem Abbas per attornatum suum dicit quod ipsemet racione manerii sui de Cavenby iuxta Glentham ad quod advocacio ecclesie predicte pertinet ad eandem presentavit tempore pacis, tempore domini Edwardi patris domini Regis nunc, quendam Robertum de Askeby clericum, qui ad presentacionem suam fuit admissus et institutus etc., per cuius mortem ecclesia illa modo vacat, et ea racione ad ipsum Abbatem pertinet presentare ad ecclesiam predictam, predictus Johannes ipsum iniuste impedit; unde dicit quod deterioratus est et dampnum habet ad valenciam centum marcarum. Et inde producit sectam.

Et Johannes venit et defendit vim et iniuriam quando etc., et dicit quod non debet ei inde ad hoc breve respondere, quia dicit quod ipse est persona impersonata in predicta ecclesia et quod ipse nichil clamat in advocacione eiusdem ecclesie: dicit enim quod ipse tenet ecclesiam illam de advocacione eiusdem Abbatis: unde petit iudicium.

Datus est dies ad audiendum iudicium etc.

143. OXFORD *v.* FRIARS MINOR (GUARDIAN OF).[2]

Donatio facta Fratribus Minoribus.

Alicia quae fuit uxor Christofori filii Simonis de Oxonia per attornatum suum petit versus Gardianum Ordinis Fratrum Minorum de Oxonia terciam partem duorum mesuagiorum et trium cotagiorum cum pertinenciis in Oxonia ut dotem etc.

Et Gardianus per attornatum suum venit et dicit quod ipse non habet feodum nec liberum tenementum in predictis mesuagiis et

[1, 2] Not in *Vulg.* Abbreviated versions of these records are found in *P.* Our text is from the De Banco Roll, Mich. 2 Edw. II. (No. 173), r. 191d and r. 203d. The headings are our own.

142. BARLINGS (ABBOT OF) *v.* VALLET

In *quare impedit* the impedient pleads that he is parson imparsonee.

John, son of Thomas Vallet of Little Hale, was summoned to answer the Abbot of Barlings in a plea that he should permit the Abbot to present a fit parson to the church of Caenby by Glentham, which is vacant and belongs to his gift, and concerning which the Abbot complains that he unjustly impedes him. And the Abbot by his attorney says that he himself by reason of his manor of Caenby by Glentham, to which the advowson of the church belongs, presented to the same in time of peace, in the time of King Edward, father of the King that now is, one Robert of Askeby, his clerk, who at his presentation was admitted and instituted, and by whose death the church now is vacant, and that for this reason it belongs to the Abbot to present, and that John unjustly impedes him, so that he has loss and damage to the amount of a hundred marks. And of this he produces suit.

And John comes and defends tort and force when etc., and says that he ought not to answer the Abbot to this writ. For he says that he [John] is parson imparsonee in the said church, and that he claims nothing in the advowson thereof; for he says that he holds the church as of the Abbot's advowson.

A day is given to hear judgment etc.[1]

143. OXFORD *v.* FRIARS MINOR (GUARDIAN OF).

Question is raised touching the nature of the rights given to the Franciscans by a deed which purports to vest in them the use of certain houses.

Alice, sometime wife of Christopher, son of Simon of Oxford, by her attorney demands against the Guardian of the Order of the Friars Minor of Oxford the third part of two messuages and of three cottages with the appurtenances in Oxford as her dower etc.

And the Guardian by his attorney comes and says that he has not fee nor freehold in the said messuages and cottages, but only use

[1] There is an adjournment to the octave of Hilary, and then another to the quindene of Easter, as judgment is not yet made.

cotagiis nisi tantum usum et aisiamentum ex concessione Edmundi nuper Comitis Cornubie et per scriptum ipsius Comitis quod profert in hec verba: 'Noverint universi etc. quod nos Edmundus Comes Cornubie dedimus et concessimus [et] pro nobis et heredibus nostris confirmavimus isto scripto Fratribus Minoribus Oxonie pietatis intuitu et pro anima nostra ac anima Regis patris nostri, cuius cor in choro dictorum Fratrum traditur sepulture, usum plenarium et aisiamentum omnium domorum et arearum quas emimus de Christoforo filio Simonis de Oxonia, que domus iuxta scolas eorundem Fratrum in parochia Sancti Ebbe Oxonie situantur sicut in carta dicti Cristofori de eisdem domibus cum suis pertinenciis nobis facta clarius continetur, et insuper usum et aisiamentum omnium edificiorum que per nos in dicto loco contigerint edificari et omnium aliarum commoditatum que ad easdem domos et areas quocunque titulo pertinere noscuntur; ita quod prefati Fratres de omnibus edificiis antedictis libere possent post mortem nostram ordinare eas amovendo vel aliter secundum quod eorum aisiamento et usui magis viderint expe[dire] etc.' Unde dicit quod ipse nichil habet vel habere clamat in predictis tenementis nisi ad voluntatem domini Regis consanguinei et heredis predicti Edmundi etc. Et petit iudicium de brevi etc.

Dies datus est eis hic a die S. Hilarii in xv. dies prece parcium sine essonio.

144. ANON.[1]

Recordum de nuper obiit.

Robertus filius Edmundi per attornatum suum petit versus Johannem[2] medietatem etc. iij. sol. ut ius et racionabilem partem etc. que ei[3] contigerit de hereditate que fuit eiusdem Edmundi patris predictorum Roberti et Johannis,[4] cuius heredes ipsi sunt, et qui nuper etc. Et unde idem Robertus dicit quod predictus Edmundus pater etc. fuit seisitus de integro predictorum tenementorum cum pertinenciis in dominico suo ut de feodo et iure, tempore pacis, tempore Regis Edwardi, patris Regis qui nunc est, capiendo inde explecita ad valenciam etc. De ipso Edmundo descendit ius pre-

[1] Text from *P*: compared with *L*. [2] versus N. *L*. [3] eum *L*. [4] R. et J. *L*.

and easement by the grant of Edmund late Earl of Cornwall and under a writing of the said Earl, which he produces in these words: 'Know all etc. that we Edmund Earl of Cornwall have given and granted and by this writing confirmed for us and our heirs to the Friars Minor of Oxford, with pious intent and for our soul and the soul of the King our father, whose heart is buried in the choir of the said Friars, the full use and easement of the houses and sites which we bought from Christopher, son of Simon of Oxford, which houses are situate near the schools of the said Friars, in the parish of St. Ebb at Oxford, as is more clearly contained in the charter of the said Christopher, and also the use and easement of all buildings which may happen to be built by us in the said place, and of all other commodities which are reputed to belong to the said houses and sites by any title whatsoever, so that after our death the said Friars may freely dispose of all the said buildings by removing them or otherwise in such wise as may seem to them expedient for their use and easement.' And therefore [the Guardian] says that he has and claims nothing in the said tenements save at the will of the King, cousin and heir of the said Edmund etc. And he demands judgment of the writ etc.

At the prayer of the parties a day without essoin is given to them here on the quindene of Hilary.[1]

144. ANON.[2]

In *nuper obiit* to a plea of military tenure the demandant is suffered to aver that the land is partible among males.

Robert, son of Edmund, by his attorney demands against John a moiety of etc. as his right and the reasonable share which falls to him of the inheritance of Edmund, father of Robert and John, whose heirs they are, and who lately died etc. And concerning this matter Robert says that Edmund, father etc., was seised in entirety of the tenements with the appurtenances in his demesne as of fee and of right in time of peace, in the time of King Edward, father of the King that now is, by taking thence esplees to the value etc.; and

[1] As to the difficulties occasioned by the rule that the Franciscans could not own property individually or collectively, see Pollock and Maitland, Hist. Eng. Law, ii. 231, 238.

[2] From two books we give a copy of the record, and from another a French note, perhaps made from the record.

dictis Johanni et Roberto[1] ut filiis et heredibus etc.; qui quidem Johannes totum tenementum tenet et predicto Roberto[2] partem suam deforciat. Et inde producit sectam etc.

Et predictus Johannes venit et defendit ius etc. et dicit quod predictus Robertus nichil clamare potest in predictis tenementis racione propartis etc.; quia dicit quod predicta tenementa aliquo tempore fuerunt cuidam Alano filio[3] Willelmi Larun,[4] qui de tenementis illis feoffavit[5] quosdam Dudum et Radulfum et Juliam nativos[6] suos, tenendum eisdem et heredibus per servicium ij. sol. per annum etc. et ad scutagium domini Regis iiij. den. quando scutagium assisum fuerit ad unam marcam et quando ad plus plus et ad minus minus.[7] Et dicit quod predicta Julia supervixit predictos Dudum[8] et Radulphum et obiit seisita de predictis tenementis etc., et habuit iiij. filios, scilicet Ricardum, Radulphum, Edmundum, Johannem,[9] inter quos tenementa partita fuerunt. Et dicit quod predictus Johannes obiit sine herede de se, et predictus Radulphus[10] postea pro parte sua etc. feoffavit predictum Edmundum patrem predicti tenentis etc. et R[icardi] petent[is] et Ricardum fratrem predicti Edmundi[11]; et de prefato R[icardo][12] exivit quidam Robertus, et de ipso R[oberto] quidam Ricardus et E. qui nunc tenent partes[13] suas de hereditate predicta etc. Unde dicit quod predicta tenementa sunt partibilia et hucusque partita tanquam sokagium,[14] ut predictum est etc. Et petit quod per patriam inquiratur.[15]

{Robert[16] fiz Esmon Osmond porta *nuper obiit* vers J. son frer de la seisine son pere, pur ceo qe les tenemenz sount partables. Et Johan dist qe E. le pere porchacea ceus tenemenz d'un T. a tenir par service de chivaler; après qi mort il com eisné entra com heir: jugement si etc.

Robert moustra coment aveient esté sovent departiz, et qe ceus tenemenz et altres descendirent a E. le pere et a ses iij. frers, entre qeus la purpartie se fist, et ceus tenemenz alotez a la purpartie un T., qi enfeffa E. nostre pere: issint partables et partiz.

Et a ceo fu r[ece]u sanz r[espondre] a la tenance par chivalrie. Et alii: nent partables, prest etc. Et sic ad patriam. Set credo qe ceus tenemenz ne sount pas en gavelkynde, qar chivalrie chaunge nature de tenance en gavelkynde.}

[1] R. et J. *L.* [2] predictus R. *L.* [3] cuiusdam Alani filii *L.* [4] Brun (?) *L.* [5] *Ins.* feoffavit *L.*; *om. P.* [6] quosdam Berodes (?) Radulphum et cum nativos *L.* [7] *Om.* quando scutagium . . . minus *L.* [8] Berodos (?) *L.* [9] scil. quosdam Rod. R. E. et J. *L.* [10] predictus J. *L.* [11] et R. fratrem ipsius et Ed. *L.* [12] *Om.* R. *L.* [13] propartes *L.* [14] *Ins.* etc. *L.* [15] *Add* Et J. similiter et ideo preceptum est vicecomiti quod faciat venire xij. etc. *L.* [16] Text from *X.*

that from Edmund the right descended to John and Robert as sons and heirs; and that John holds the whole tenement, and deforces Robert of his share. And thereof he produces suit etc.

And John comes and defends his [Robert's] right etc. And he says that Robert can claim nothing in the tenements by reason of purparty. For he says that the tenements once upon a time belonged to one Alan, son of William of Larun[1]; and that he thereof enfeoffed Dudo and Ralph and Julia,[2] his born villeins, to hold to them and their heirs by the service of two shillings a year etc. and by fourpence to the King's scutage when scutage shall be assessed at one mark [on the fee] and so in proportion. And [Robert][3] says that Julia outlived Dudo and Ralph and died seised of the tenements etc., and had four sons, to wit, Richard, Ralph, Edmund and John, between whom the tenements were partitioned. And he says that John died without an heir of his body; and that afterwards Ralph as regards his share enfeoffed the said Edmund (father of the tenant and of the demandant) and Richard, Edmund's brother; and from Richard issued one Robert, and from him one Richard and one E., who now hold their shares of the said inheritance. So he says that the tenements are partible and heretofore partitioned as socage, as is aforesaid etc. And he prays that this be inquired by the country.

{Robert[4] son of Edmund Osmund brought a *nuper obiit* against John his brother on the seisin of his father, because the tenements are partible. And John said that E. the father purchased these tenements of one T., to hold by knight's service, and that on his death he [John] entered as eldest and heir, and he prayed judgment.

Robert showed how the tenements had often been partitioned, and how they with other tenements descended to E. the father and his three brothers and were partitioned among them, and how these tenements were allotted as the share of one T., who thereof enfeoffed E. the father; so that they are partible and partitioned.

And [the demandant] was received to this [replication] without answering about the tenancy by chivalry. And the other side said 'Not partible: ready'; and so to the country. But I think that these tenements are not in gavelkind, for in gavelkind chivalry changes the nature of the tenancy.}

[1] Or perhaps 'William Brown.'

[2] Names uncertain.

[3] An omission is to be suspected at about this point, for, as the text stands, we seem to pass from the plea to part of the replication.

[4] Perhaps an abstract of the preceding record, and not a report.

145. BIGOD *v.* TATTERSHALL.[1]

Dowere porté vers tenaunt en dowere, ou la garrauntie fut countrepledé.

Alice qe fut la femme Roger Bygod[2] porta bref de dowere vers Eleyne[3] qe fut la femme Robert Tatishalle et demaunda la terce partie de deux parties del manier de H. Eleyne[4] vocha J. de T.[5] fiz et heir R. de T.; qe vynt en court et demaunda par qei Eleyne li vocha.

Frisk. Nous tenoms la moyté de cel manier en noun de dowere,[6] partie en allowance,[7] partie cum afert[8] a nostre dowere de la moyté de cel manier, de vostre heritage, dount la reversioun est a vous. Et issint vochoms par r[esoun][9] de reversioun.

Malm. Quant a la terce partie de ij. parties, ele ne deit estre gar[auntie], qar nous dioms qe actioun de dower qe Alice demaunde si acrust pluistost a Alice etc., et de eygné temps deservy qe ne fit a cesti Eleyne. Et demaundoms jugement.[10]

{Alice[11] qe fu la femme Roger Bygot porta bref de dower vers une Eve tenante en dower. Eve voucha J. fiz. et heir son baroun par r[eson] de reversion.

Malm. pur le vouché. Eve tent en dower du doument nostre pere, et A. demande du dowement nostre ael de eisné tens deservi[12]; par qei ele ne serra pas garantie.}

{Un[13] bref de dowere fust porté vers une femme tenante en dowere, qe voucha l'eyr, a qi la reversion appendoit; qe dit qe la demande ceste qe porte le bref si est de plus haut droit qe ne soit le dowere cele qe voucha, par qei ele ne deit estre garrantie etc.}

146. HUISHE *v.* WIKE.[14]

Replegiari pur damage fesaunt en ewe.

Johan de Huishe[15] porta soun replegiari vers W. de Wike[16] et counta q'atort prist soun batel en la vile de C. en l'ewe de

[1] Not in *Vulg.* Text from *P*: compared with *L*, *Y*. [2] Pygot *L*. [3] Eve *Y*, and so below. [4] Eve qe fu la femme R. qore est la femme Johan de C. *Y*. [5] Tatershale *Y*. [6] *Ins.* et *L*, *Y*. [7] *Ins.* des auters tenemenz *Y*. [8] allowance et com afferte *L*. [9] reson *L*. [10] Alice demande sa crust plus touste qe al autre etc. *L*. *In Y a longer version of this speech is found.* [11] Text of this short version from *X*. [12] servi *X*. [13] This is the note of the case in *Z*. [14] Not in *Vulg.* Text from *P*: compared with *L*, *Y*, and a short note in *X*. [15] Johan de Eligham *L*; Elman *Y*. [16] No names in *X*.

145. BIGOD *v.* TATTERSHALL.[1]

Dower demanded against a doweress who vouches. The warranty is counterpleaded on the ground that the demandant has the earlier right.

Alice, sometime wife of Roger Bigod, brought a writ of dower against Eva,[2] sometime wife of Robert Tattershall, and demanded the third part of two parts of the manor of H. Eva vouched J. of Tattershall, son and heir of Robert. He came into court and demanded what Eva had for her voucher.

Friskeney. We hold a moiety of this manor in dower, partly in allowance [for dower elsewhere], partly as our dower out of a moiety of this manor, of your inheritance, the reversion whereof is yours. So we vouch by reason of the reversion.

Malberthorpe. As to the third part of two parts she ought not to be warranted, for we say that Alice's action to demand dower accrued to her as having been deserved at an earlier time than that at which an action accrued to Eva. And we demand judgment.

{Alice,[3] sometime wife of Roger Bigot, brought her writ of dower against Eva, tenant in dower. Eva vouched J. son and heir of her husband by reason of the reversion.

Malberthorpe for the vouchee. Eva holds in dower by the endowment of our father, and Alice demands on the endowment of our grandfather, earned at an earlier time, so she ought not to be warranted.}

{A writ of dower was brought against a woman tenant in dower, who vouched the heir to whom the reversion belonged. He said that the demand of her who brought the writ is of higher right than is the dower of her who vouched him, wherefore she ought not to be warranted.}

146. HUISHE *v.* WIKE.[4]

In a several fishery a boat may be taken as *damage feasant.*

John of Huishe brought his replevin against W. of Wike and counted that he wrongfully took his boat in the town of C. in the

[1] Record not found. Proper names uncertain.

[2] Or 'Ellen.' One book adds that she is now the wife of John de C.

[3] We append two brief notes of the same case.

[4] Record not found. Proper names uncertain.

E.,[1] et de ileqes le amena taunqe a certeyn lieu[2] et ileques le detint etc.

Will. avowa etc. par la resoun q'il trova cel batel et genz pechaunz en cel batel en le ewe[3] ou il se pleynt la prise estre fete en[4] sa severale pecherie. Issint le prit il en soun several damage fesaunt.

Toud.[5] La leu ou la prise fut fete est nostre comune pescherie, prest etc. (Et fu receu sanz dire coment.[6])

Will. Nostre severale pescherie, et nous[7] et noz auncestres[8] seisi du temps dount etc.

Et alii econtra etc.

{Un[9] avowa la prise d'un batel pur ceo q'il trova gentz pessauntz en cel batel en l'ewe ou le pleintif se fust pleint, q'est sa several pescherie. Et le pleintif dist qe c'est sa comune pescherie. Et sur ceo furent a issue etc.}

147. ANON.[10]

Fin, ou garnementz et furment furent grauntez.

R. et Alice conis[ent] les tenemenz contenuz en le bref estre le dreit G. et ces ly rendunt en ceste court a avoir etc., et[11] R. et A. et les heirs R. garr[auntireient]. Et pur ceste reconisaunce etc. mesme cesti G. graunte a les avauntdiz R. et A. a terme de lour ij. vies ij. garnisons[12] pris de x. s.,[13] vj. peirs de soudlers[14] pris de iiij. s., iiij. peirs de chaux[15] pris de ij. s.,[16] ij. quarters de furment pris etc. Et nota q'il mettent nent forqe le pris de garnemens et soudlers.[17]

148. ANON.[18]

Quare impedit sanz title, et pus fut dit q'il ne fut pas seisi de tenemenz a qi l'avoweson est appendaunt.

Margerie qe fut la femme P. de C.[19] porta un *quare impedit* vers T. de E.[20] et counta qe a tort li destourbe a presenter etc. Et dyt qe a

[1] en lawe de Tame. *L*; en lewe de Taynflete *Y*. [2] *Om.* de . . . lieu *L*. [3] en leawe *L*. [4] fete qest *Y*. [5] *Om.* this speech *L*; *Malm. Y*. [6] This phrase from *X*; not in *P*, *Y*. [7] *Om.* et nous *L*. [8] *Ins.* scilicet nostre pere ael et besael *Y*. [9] This note of the case from *Z*. [10] Not in *Vulg.* Only found in *L*, *Z*. The heading is our own. [11] *Om.* et *L*. [12] garnementz *Z*. [13] xx s. *Z*. [14] viij. payrs de soulers *Z*. [15] chaus *Z*. [16] iij s. *Z*. [17] fourment et de ceo mye le pris etc. *Z*. [18] Not in *Vulg.* Text from *P*: compared with *L*, and a brief note in *X*. Head-note from *L*. [19] Johan Martyn *X*. [20] Thomas de Lodlowe *X*; Thomas Ded *L*.

water of E.[1] and thence carried it to a certain place and detained it.

Willoughby avowed because he found the boat and folk fishing in the boat in the water where the taking is laid in the plaint and in his several fishery. So he took it in his several *damage feasant.*

Toudeby.[2] The place where the taking was made is our common fishery. Ready etc. (The plea was received without his saying how it was his fishery.)

Willoughby. Our several fishery, and we and our ancestors were seised from time [immemorial] etc.

Issue joined.

{One avowed the taking of a boat, for that he found folk fishing in that boat in the water in which the plaintiff laid the taking, which water is [the avowant's] several fishery. The plaintiff said that this is [the plaintiff's] common fishery. Issue joined.}

147. ANON.

An annual render of clothes and corn granted by fine.

R. and Alice made conusance that the tenements contained in the writ were the right of G. and rendered them to him in this court, to hold etc., and R. and Alice and the heirs of R. would warrant. And for this conusance etc. G. grants to R. and A. for the term of their two lives two garments, price ten shillings,[3] six pairs of shoes, price four shillings, four pairs of boots, price two shillings, two quarters of wheat, price etc.[4] And note that they specified the price of the garments etc. but not of the wheat.

148. ANON.[5]

In a *quare impedit* the plaintiff counts that tenements to which the advowson is appendant came to the impedient's hands and were granted by him to the plaintiff. This is a good count, but 'You are not seised' is a good plea.

Margery, sometime wife of John Martin, brought a *quare impedit* against Thomas of Ludlow, and counted that he unlawfully disturbed her from presenting. And she said that it belongs to her to present,

[1] Or 'of Tame'; or 'of Taynflete.'
[2] Or Malberthorpe.
[3] The prices are variously given.
[4] The mention of the price in this instance should be omitted. That is the point of the case.
[5] Record not found. Proper names uncertain.

ly apent a presenter par la resoun qe un P. fut seisi de un mees etc. a qi l'avowesoun est apendaunt[1]; le quel P. presenta un soun clerk S. par noun etc.; après qi mort le dit mees etc., a qi l'avowesoun est apendaunt, devynt[2] en la meyn un T. de L.[3]; le quel T. graunta le dit mees, a qi etc., a M. la femme P.,[4] issint qe ele est seisi del mees, a qi etc.; et issint apent a li a presenter.

Herle. A cel counte ne deit ele estre r[espound]u, qe par la ou ele dit qe lez tenemenz devyndrent en la meyn T. et ne dit pas coment ou par purchaz ou en altre manere, jugement.

Frisk. Nous sumes seisi de soun lees demene. Jugement, si le counte ne soit assez bon.

Le counte fut agardé bon.

Herle. Qe ele n'est pas seisi de[5] tenemenz a qi l'avowesoun est apendaunt. Prest etc.

Frisk. Qe il mesme lessa les tenemenz a nous a qi l'avowesoun est apendaunt. Prest etc. Par qei il covent q'il r[espoigne] a soun lees demene.[6]

Herle. Il ount counté qe ele est seisi des tenemenz a qi l'avowesoun etc., issint qe ceux sount cause de[7] lour actioun. Q'ele n'est pas[8] seisi des tenemenz a qi etc.[9] prest etc.

149. ANON.[10]

Nota enprisonement allegé par gardeyn.

Un enfaunt deynz age fit defaute après aparence.[11] Par qei issit le petit *cape*.[12] Le demaundaunt se prist a cele defaute. L'enfaunt vynt[13] par gardeyn, qe dit qi'l fut en cheminaunt[14] vers la court a r[espoundre] pur l'enfaunt et fut pris a C. et enprisoné.

Ber. Pur qei et en qi prisone, qe put estre qe vous estoiez enprisoné par collucioun?

Qe dit qe noun, einz par certeyn enchesoun[15] en la prisone le Roi. Le demaundaunt tendist de averer qe noun.[16] Et alii econtra.

[1] *Om. to after next* apendaunt *L.* [2] *Om. to after next* devyndrent *L.* [3] main Thomas de Lodlow *X.* [4] a ceste Margerie *X.* [5] des *L.* [6] *A later note in X says*: le defendaunt dit qe le plaintif nest seisi del meson nient respectant a son lesse demene. [7] issint sunt ceux de *L.* [8] Que yl ne sunt pas *L.* [9] a qi lavoweson est appendaunte *L.* [10] Not in *Vulg.* Text from *P*, compared with *Y.* [11] *Om.* apres aparence *Y.* [12] *Ins.* et retorne a iij. semeignes de Pasche *Y.* [13] respondy *Y.* [14] en venant *Y.* [15] par cele encheson et par cele *Y.* [16] Et le demandant dist nent enprisone tieu jour etc. *Y.*

because one P. was seised of a messuage etc. to which the advowson is appendant, and presented his clerk, one S. by name, etc.; and that after his death the messuage, to which the advowson is appendant, came into the hands of Thomas of Ludlow, who granted the messuage etc. to [the demandant], so that she is seised of the messuage, to which [the advowson is appendant]; and that therefore it belongs to her to present.

Herle. To that count she ought not to be answered; for, whereas she says that the tenements came into the hands of Thomas and does not say how, whether by purchase or otherwise, we demand judgment.

Friskeney. We are seised by your own lease. Judgment, whether the count be not good enough.

The count was adjudged good.

Herle. She is not seised of the tenements to which the advowson is appendant. Ready etc.

Friskeney. He himself leased to us the tenements to which the advowson is appendant. Ready etc. Therefore it behoves him to answer to his own lease.

Herle. They have counted that she is seised of the tenements to which the advowson [is appendant], so that those tenements are the cause of their action. Ready [to aver] that she is not seised of the tenements to which etc.

149. ANON.

A guardian imprisoned when on his way to answer for an infant.

An infant within age made default after appearance. Therefore the little *cape* issued. The demandant insisted on this default. The infant appeared by a guardian, who said that he was on his way to the court to answer for the infant and was taken at C. and imprisoned.

Bereford, J. By whom and in whose prison, for it may be that you were imprisoned by collusion?

He said: Not so, but for such and such a cause and in the King's prison. The demandant tendered to aver the contrary. Issue joined.

150. FRESSINGFIELD *v.* ROSSELIN.[1]

Replegiari ou le pleintif fist une descente et le avowant fist altre descente et sur cele diverseté sunt au pais.

Johan de Fressingfelde se pleint de Willem Rosselin qe a tort prist ces avers le Mekredy prochein après la feste Seint Marche l'an du Roi j°, c'est a savoir le Mekredy iij. affres, le Joendy iij. averis et le Vendirdy iij. en le manoir le dit Johan en C.

Willem Rosselyn avowa la prise de v. avers en le dit Mekredy et v. avers en le dit Joendy et v. avers en le dit Vendirdy, et ceo fist pur le return, par la reson qe un Willem le Mareschal en tient de lui le manoir de Routh[ale], dont le lieu ou la prise fut fete est parcel, par homage, fealté et par les service de la quarte partie de un fee de chevaler, et par les services de c. sous par an ; des queux services Jon son pere etc. fu seisi parmi la main un Hughe de Cresey, cosin mesme cestui Willem com etc., et pur les services arrere del xxiiij. anz le Roi E., qe mort est, jusqes au jour de la prise si avowe etc. sur cestui Willem le Mareschal etc.

Frisk. Fete lui cosin.

Mal. De Hughe a Estephen com a frere et heir ; de Estephen, pur ceo etc. resorti etc. a Aveline com a aunte et heir, soer Isabel mere Hughe et Estevene ; de Aveline descendit etc. a Willem com a fiz etc.; de W. a J. ; de Johan a W. com fiz et heir sur qi nous avom avowé.

Frisk. Et nous jugement de ceste avowerie. Sire, vous avez bien entendu lour descente et lour resort *ut supra*. La vous dioms qe un Roger de Cresey fut seisi de ceus tenemenz com de son dreit demesne, pere les ditz H[ughe] et Estephen, issint qe Isabel rien n'avoit en les tenemenz si noun com femme Roger de Cressy. Et il ount fete cete avowerie sur Willem le Mareschal com sur cosin et heir H[ughe] et E[stephen] de par Isabel lour mere ; en qi saunke les tenemenz ne pount en nule manere devenir ; qe plus tost serroit eschete au chief seignour etc. Jugement, si sur Willem com sur vostre verrei tenant puissez avowerie faire.

[1] Text from *Y*. There is a short note of this case in *X*.

150. FRESSINGFIELD *v.* ROSSELIN.

If *B*, who is seised, enfeoffs *C* to hold of *A*, the chief lord, then, even before any attornment, *C* is privy enough to *A* to contest an avowry by him upon *X*, which is inconsistent with *B's* right. Land that descends *ex parte paterna* will not pass to maternal kinsfolk.

John of Fressingfield complains that William Rosselin wrongfully took his beasts on the Wednesday next after the feast of St. Mark in the first year of the King: to wit, on the Wednesday three beasts, on the Thursday three, on the Friday three, in the manor of the said John at C.

William Rosselin avowed the taking of five beasts on the said Wednesday, five on the Thursday, and five on the Friday (and this he did to obtain the return), for the reason that one William Marshall holds of him the manor of Routhall, whereof the place where the taking was made is parcel, by homage, fealty, and the service of the fourth part of a knight's fee and the service of a hundred shillings a year, of which services John his father [whose heir he is] was seised by the hand of Hugh of Cressy, cousin of William [Marshall] as [by the hand of his very tenant], and for the services arrear from [31] Edw. I. until the time of the taking, he avows upon this William Marshall etc.

Friskeney. Make him cousin.

Malberthorpe. From Hugh to Stephen as brother and heir; from Stephen, for that [he died without heir of his body] it resorted to Avelina as aunt and heir, sister of Isabel mother of Hugh and Stephen; from Avelina it descended to William as son etc.; from William to John; from John to William as son and heir, upon whom we have avowed.

Friskeney. We pray judgment of this avowry. Sir, you have heard their descent and resort. Now we tell you that one Roger of Cressy was seised of these tenements as in his own right, and he was father of Hugh and Stephen, so that Isabel had nothing therein, except as wife of Roger. And they have made this avowry upon William Marshall as cousin and heir of Hugh and Stephen on the side of Isabel their mother; and into her blood the tenements can in no wise come, for, rather than that, they should escheat to the chief lord. Judgment, whether you can avow upon William as upon your very tenant.

Herle. Qi estes vous qe donez tieu respons de oster nous de nostre verrei tenant? Et vous ne faites vous pas privé etc. Jugement, si en vostre bouche qe estes estrange tieu respons i gise. Et d'altre part les tenemenz ne sunt pas en demande, einz les services, des queux Johan nostre auncestre ad esté seisi parmi la main Hughe son verrei tenant: jugement: prest etc.

Fris. Et nous jugement si sur altre qe sur cestui Johan de Fresinfelde poez avowerie faire, par la reson qe les tenemenz furent en la seisine un Roger de Crescy com de sun droit demene, issi qe Isabel sa femme rien n'avoit en ceux tenemenz, si noun com femme Roger; et de celui Roger descendit etc. a Hughe com a fiz et heir; de H[ughe] a E[stephen] com a frere et heir; le quel Estephen hors de sa seisine enfeffa Johan de Vaux a tenir de lui par les services de j. dener par an et fessant pur lui a chief seignur les services etc. Estephen se lessa morir sanz heir, par qei Johan de Vaux fut tenant de dreit[1] Johan Rosselyn, pur ceo qe Estephen, qe meen fust, devia sanz heir de sey. Et pus Johan de Vaux se lessa morir, Johan son fiz deinz age; par qei cestui W. Rosselin seisi la garde Johan fiz et heir Johan de Vaux. Johan esteant de plein age vendi mesmes les tenemenz a Alein Howel a tenir des chief seignurs etc.; le quel Alein etc. vendi mesmes les tenemenz a cestui Johan de Fresinfelde a tenir etc. Il sovent vous ad tendu et uncore vous tende les services dues. Jugement, si sur altre qe sur lui puissez avowerie fere. Et la ou vous dites qe les tenemenz sunt tenuz de vous par les services *ut supra*, nous vous dioms qe les tenemenz sunt tenuz de vous par homage, par fealté et par les services de la quarte partie de un fee de chevaler et viij. d. par an pur touz services, et nent par les services de c. s. sicom vous avowez[2]; et ceo voloms averer.

Herle. Il nous etc. a ouster nous de nostre verrei tenant en fessant lui meismes privé a nous par le feffement un Alein Howel, et ne dy pas q'il furent unkes seisi parmi la main le dit Alein, et issi Alein tut estrange a nous. Jugement, si par le feffement Alein, qe est tut estrange a nous, vous puissez vous mesme fere privé a nous en estrangissement de nostre verrai tenant.

Ber. Conussez les possessions auxi com il ad dit ut supra et demurrez en jugement (*quasi diceret* vous serrez tut[3] delivers).

Malstoke.[4] Johan Rosselin ne poet pas conustre les services Aleyn Howel, pur ceo q'il ne atturna unqes a Johan Rosselin; donqes piert

[1] du dit (?). [2] avowe Y. [3] *Probably a mistake for* tost. *Elsewhere* delivers *has been seen as the pass. partic. of* deliverer. [4] *Sic. Probably it should be* Malberthorpe.

Herle. Who are you to give such an answer ousting us from our very tenant? You do not make yourself privy. Judgment, whether such an answer lies in the mouth of you who are a stranger. Besides, not the tenements, but the services are in demand, and of these services John our ancestor was seised by the hand of Hugh his very tenant: ready etc.: judgment etc.

Friskeney. And we pray judgment whether you can avow upon any other than the plaintiff, for these tenements were in the seisin of one Roger of Cressy as of his own right, so that Isabel his wife had nothing therein, except as his wife; and from Roger [the right] descended to Hugh as son and heir; from Hugh to Stephen as brother and heir; and out of his seisin Stephen enfeoffed John de Vaux, to hold of him by the service of one penny a year, and by doing for him to the chief lord the [due and accustomed] services. Stephen died without an heir. Wherefore John de Vaux became tenant of the said John Rosselin, since Stephen, who was mesne, died without an heir of his body.[1] And then John de Vaux died, leaving his son John within age. Wherefore William Rosselin [the avowant] seised the wardship of John, son and heir of John de Vaux. And when this John was of full age he sold the tenements to Alan Howel, to hold of the chief lords etc. And Alan sold the tenements to the plaintiff, to hold etc. And often has he tendered and still he tenders to you the due services. Judgment, whether you can make avowry upon any other person. And, whereas you say that the tenements are holden of you by the services aforesaid, we tell you that they are holden of you by homage, fealty, and the services of a fourth part of a knight's fee and viij. pence[2] a year for all services, and not by the service of a hundred shillings as you avow: and this we will aver.

Herle. He [endeavours] to oust us from our very tenant, by making himself privy to us by the feoffment of Alan Howel, and does not say that we were ever seised by the hand of the said Alan; so Alan is a total stranger to us. Judgment, whether by the feoffment of Alan, who is wholly strange to us, you can make yourself privy to us to the estrangement of our very tenant.

Bereford, J. Admit the possessions, as he has alleged them, and then abide judgment (meaning that he would not have to wait long).

Malberthorpe. [William] Rosselin cannot admit [possession of the services] of Alan Howel, for [Alan] never attorned to John

[1] The words 'of his body' should be omitted.

[2] Probably it should be 'one penny.' To mistake *vn* for *viij* is easy.

bien qe le feffement A.[1] ne deit nous estranger de nostre verrei tenant, par qi nous avoms esté seisi. Jugement.

Ber. Qant Johan le fiz Johan de Vaus enfeffa Alein a tenir de W. Rosselin, si Alein eust fet felonie avant l'atturnement, qi avereit l'eschete? Il semble qe Willem.

Herle. Sire, nous vous dioms qe Isabel mere H[ughe] et Estephen fut seisi[2] de ces tenemenz com de son[3] dreit demene en la manere *ut supra.* Prest etc.

Frisq. Qe Isabel unkes en ces tenemenz rien n'avoit, si noun com femme Roger en la manere avantdite com nous avoms dit *ut supra.* Prest etc.

Et preceptum est vicecomiti quod venire faciat xij. etc. in octabas S. Trinitatis.

Note from the Record.

Copies of the record of this case are found in some of the Year Books (*P*, *L*, *Y*) of the second year.[4] The plaintiff's name appears as John of Fressinfeld, Fresingfeld, Friggefelde; the avowant's as William Rosselyn, Rosteley, Rustelyn. Five writs were brought for distresses upon successive days in the manor of Rouhalle, Rugache, Roghat.

The avowry is upon William le Marescal, as tenant by homage, fealty, the service of half a knight's fee and a hundred shillings a year. John Rosselyn, the avowant's father, was seised by the hand of Hugh of Cressy. From Hugh the manor descended to his brother Stephen; from Stephen it resorted to their aunt Avelina, sister of their mother Isabel. From Avelina it descended to her son William; from him to his son John; from him to his son William, upon whom the avowry is made. The first distress was for homage arrear; the four other distresses were for rent arrear for the years 31–34 Edw. I.

The plaintiff thereupon pleads that the manor was the right and purchase of Roger of Cressy, and descended from him to Hugh, who held it of John, the avowant's father, by the service of half a knight's fee without other service; and that from Hugh it descended to Stephen his brother; and that Stephen enfeoffed John 'de Vaus de Rosewey,' to hold of Stephen, rendering a penny a year to him and doing for him the service due to the chief lords of the fee. (*Note continued on the opposite page.*)

[1] A. J. *Y.* [2] fur' seisiz *Y.* [3] leur *Y.* [4] That in *Y* is much the best.

Rosselin. So it is plain that Alan's feoffment ought not to estrange us from our very tenant, by whose hand we have been seised.

Bereford, J. When John, son of John de Vaux, enfeoffed Alan to hold of William Rosselin, if Alan had committed felony before any attornment, who would have had the escheat? Apparently William.

Herle. We tell you that Isabel, mother of Hugh and Stephen, was seised of these tenements as of her own right in manner aforesaid. Ready etc.

Friskeney. She never had anything in these tenements, save as wife of Roger and in manner aforesaid. Ready etc.

The sheriff was directed to cause a jury to come on the octave of Trinity.

Note from the Record (*continued*).

The plaintiff's plea proceeds to allege that Stephen died without an heir; and that the lordship and the service of a penny previously belonging to Stephen accrued to John Rosselin, the avowant's ancestor, as his right and escheat; and that therefore after the death of John de Vaus, John Rosselin had the wardship of John, son of John de Vaus; and that when John de Vaus the younger came of age he enfeoffed Alan Howel, to hold of the chief lords; and that Alan out of his seisin enfeoffed the plaintiff, to hold of the chief lords; and (since, on the death of Stephen without an heir, the service of John de Vaus belonged to John Rosselin the chief lord by reason of escheat, and John de Vaus was the tenant of John Rosselin and afterwards of the avowant, and since the plaintiff holds of the chief lords by the feoffment of Alan Howel) the plaintiff craves judgment whether the avowant, estranging the plaintiff, can avow upon William Marshall, especially as the plaintiff has been and is ready to do due service.

The avowant replies that the manor was the right and purchase of Roger's wife Isabel (sister of Avelina); and that Roger had nothing therein, except as Isabel's husband; and that from Isabel it descended to William Marshall as cousin in manner aforesaid; and of this the avowant puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the octave of Trinity.

PLACITA DE TERMINO S. MICHAELIS ANNO REGIS EDWARDI FILII REGIS EDWARDI TERCIO.

1A. BERENGER *v.* BARTON.[1]

Covenaunt, ou piert qe jeo avera recoverer vers le lessour ou jeo su enjetté par le eschetour. *Secus* si par altre estraunge.

Covenaunt des tenementz lessetz a terme des aunz ou l'eschetour seisi les tenemenz par reson de garde etc.[2]

Mestre Richard Hughe[3] porta son bref de covenaunt vers Richard de B.,[4] et counta q'a tort ne luy tent covenant etc. de un meys et iiij. acres de terre et xiij. acres de pree, xl. acres[5] de boys, c. s. de rente ove les apurtenaunces; et dit qe la ou mesme celuy Richard de B. luy lessa les avauntditz etc. a terme de viij. aunz[6] et obliga luy et ses heirs a la garrauntie a quiter et defendre al avauntdit R. de H. les avauntditz etc. tauncqe a terme avauntdit pleignement acompli encountre tutes hommes,[7] par quel lees R. fust seisi tauncqe l'eschetour le Roy luy osta par le noun age W. fitz et heir H. de Stormy,[8] qe mesme le meys etc. tient du Roi en chief[9]; pus[10] quel engettement Richard de H. est sovent venuz al avaundit R. de B. et li ad prié qu'il luy tensist[11] covenaunt etc.

Toud. defendit et dit: Sire[12] il counte qe l'eschetour le Roy lui ad ousté de soun terme; et, desicome il n'ount[13] nul tort en nostre persone assigné,[14] demaundoms jugement si a tiel demoustraunce devoms r[espoundre].[15]

[1] Text from *A*: compared with *D*, *L*, *M*, *P*, *Q*, *R*, *S*, *Y* (f. 251) and a brief version in *X*. The version in *B* is given below as 1B. [2] Headnotes from *A* and *B*. [3] Richard de Wingham, Wyngham, Bingham, Hengham, Hyngeram, Hyngham *Al. Cod.* [4] Barone, Bractone, Brattone, Braytone, Bartone, Grattone *Al. Cod.* [5] Acreage variously stated in MSS. [6] *Ins.* pleynement accomplis *L*, *Q*, *S*. [7] *Om.* a quiter . . . hommes *L*, *Q*, *R*, *S*. [8] Henri Normy *L*; Storm' *D*, *M*; Stormy *P*, *Q*; Sturmy *R*; Storrmi *S*. [9] *Om.* en chief *L*, *Q*, *R*, *S*. [10] apres *L*, *Q*, *R*, *S*; pur *M*. [11] tienge *L*; teigne *Q*. [12] *Om.* defendit . . . Sire *L*, *Q*, *R*. [13] nad *L*, *Q*, *R*, *S*. [14] *Ins.* ne afferme *L*. [15] deit il estre resseu *P*.

PLEAS OF MICHAELMAS TERM, 3 EDWARD II. (A.D. 1309).[1]

1A. BERENGER *v.* BARTON.[2]

A, tenant in chief, demises for years to *B*, who demises with warranty to *C*. On *A*'s death leaving an infant heir, the escheator ejects *C*. An action of covenant lies for *C* against *B*. *Semble* it would be otherwise if the ejector was a person against whom *C* could bring the *quare eiecit*.

Ingelram Berenger brought his writ of covenant against Richard of Barton, and counted that wrongfully he does not keep covenant with him concerning a house, four acres of land, thirteen of meadow, forty of wood, and a hundred shillings' worth of rent with the appurtenances; and he says that [the defendant] leased to him the said [tenements] for a term of eight years, and bound himself and his heirs to warrant, acquit and defend the said [tenements] to [the plaintiff] against all men until the said term should be fully accomplished; and that by this lease [the plaintiff] was seised until the King's escheator ousted him by reason of the nonage of [Henry] son and heir of Henry Sturmy, who held the house etc. of the King in chief: and that since the ejectment [the plaintiff] has often come to [the defendant] and has prayed him to hold covenant etc.

Toudeby defended and said: Sir, he counts that the King's escheator has ejected him from his term; and, since they have assigned no tort in our person, we demand judgment whether we ought to answer to such a count.

[1] In the various readings given at the foot of the text we shall henceforth occasionally use the symbol *Al. Cod.* to signify that some, but not necessarily all, the other manuscripts give a particular reading.

[2] This case is Fitz., *Covenaunt* 6, and perhaps *Quare eiecit* 4. Fitzherbert used the first of our two reports. Proper names from the record.

Berr. Il covent qe vous assignez certeyn cause en vostre demoustraunce aultre q'a dire qe l'eschetour vous ad engetté,[1] coment et par quel enchesoun. (En supposaunt[2] si l'eschetour ly oust engetté[3] sauntz renable enchesoun, qe soun recoverir fust proprement a[4] luy[5] et nent vers soun lessour.) Et d'aultrepart quel estat avoit Richard?

Herle. Sire, nous vous dioms qe Henri Stour de mesme ceaux tenemenz etc. fust seisi, qe mesme ces etc. tient de nostre seignour le Roi[6]; le quel H. lessa cel mies etc. a Richard de B. a terme de viij. aunz; le quel Richard nous lessa soun terme[7] par soun fait,[8] issint qe après la mort H. le Stormy si entra l'eschetour par le noun age W. soun fitz; et, desicome nous botoms avaunt le fait Richard nostre lessour qe comprent le lees, et qu'il nous deit garrauntir et defendre,[9] jugement s'il ne deit a ceo respoundre, depus qe l'engettement[10] qe l'eschetour nous fist n'est[11] pas nostre defaut ne pur nulle trespas qe en nostre persone fust trové.[12] Et d'aultrepart, nous ne poums aultre[13] estat qe nostre estat demene pleder; qar[14] il poet estre qe R. nostre lessour adeprimes n'avoit qe terme, et[15] H. li relessa en sa seisine et quiteclama, et issint soun estat enlargi[16]; et,[17] le quel qu'il eyt, fee ou terme, si covent il qu'il r[espoigne]. Jugement etc.

Frisk. Qaunt q'il parle si est d'un enjettement qe celuy fist q'est tot estraunge a nous, qi fait n'est pas punysable de reson en nostre persone. Par qei etc.[18]

West. Nous dioms qe vous nous lessastes mesme le mees etc. et obligastes par vostre fait a nous garrantir et defendre, et ceo n'avetz vous mye fait, et issint affermoms un tort en vostre persone com de un covenaunt nyent tenu.[19] Et d'aultrepart, vous averez[20] vostre recoverir vers le heir H., qaunt il soyt de age, de mesme cest enjettement, et si[21] ne vous fist il nul tort unqore[22]; dount graunt duresse serreit si nous ne eussoms[23] devers vous etc. Et demaundoms jugement etc.

Scrop.[24] Si un homme du people luy eust engetté, vers qi il porreit avoir actioun, il ne serreit mye merveille mesqe vous ne

[1] vous ad ouste *L*, *Q*, *Y*; vous osta *R*. [2] encheson qe *L*, *Q*, *R*. [3] vous eit engitte *R*. [4] vers *D*, *M*, *P*. [5] encheson vous avez vostre recoverir vers ly qe vous ad fet le tort *L*; *sim.* *Q*, *R*, *S*; luy de ceo qil vous ad engette *S*. [6] *Ins.* en chief *L*, *Q*, *S*. [7] *Ins.* et *A*. [8] *Ins.* qe sy est *R*. [9] comprent en sey garrantie, defens etc. *R*. [10] lengettour *D*. [11] ne fut *M*, *P*, *R*. [12] trove mes par reson ut supra *R*; respoundre desicome le fet leschetour ne surd de nostre feaute ne de nostre trespas *L*; *sim.* *Q*, *S*. [13] dautre *M*. [14] et *L*, *Q*, *R*, *S*. [15] *Ins.* qe *D*, *M*, *P*. [16] enlargi *L*, *Q*, *R*, *S*; enpir' *A*; enpury *M*; enpuri *D*, *P*, *Y*. [17] *Om.* et *A*, *L*; mes *D*, *P*. [18] pur qi fet nous ne devoms estre puny *L*, *Q*, *S*; estre partie *R*. [19] covenaunt enfreint *R*. [20] avetz *D*, *L*, *M*, *P*, *R*, *S*, *Y*; avietz *Q*. [21] sil *Y*. [22] fist il unqore nul tort *D*, *L*, *S*. [23] *Ins.* recoverer *P*, *Q*, *R*, *S*. [24] *Ber.* *Q*, *S*

Bereford, C.J. It behoves you to assign in your count a certain cause, and not merely to say that the escheator ejected you; for,[1] supposing that the escheator ejected you without reasonable cause, then [your] recovery would properly be against him, and not against [your] lessor. Moreover, what estate had [the plaintiff]?

Herle. Sir, we tell you that Henry Sturmy was seised of these tenements; and that he held them of the King in chief; and that he leased this house etc. to [the defendant] for a term of eight years; and that [the defendant] leased over his term by this deed; and that after the death of Henry Sturmy the escheator entered by reason of the nonage of [H.] his son and heir; and, since we produce the deed of [the defendant] our lessor, which comprises the lease and [shows] that he ought to warrant and defend us, we demand judgment whether he ought not to answer to this, as the ejectment done to us by the escheator is not due to any default of ours or to any trespass found in our person. Moreover, we can plead no estate other than our own estate; for it may be that [the defendant] our lessor had originally only a term, and that afterwards H. Sturmy released and quitclaimed to him in his seisin, so that thereby [the defendant's] estate was enlarged. And, whether he has fee or term, it behoves him to answer [to our count]. We demand judgment.

Friskeney. Whatever he may say, it is of an ejectment done by one who is a total stranger to us, and whose act cannot with reason be punished in our person. Wherefore etc.

Westcote. We say that you yourself leased the house etc. and by your deed bound yourself to warrant and defend. That you have not done, and so we do affirm a tort in your person, namely a breach of covenant. Besides, you will have your recovery against Henry Sturmy's heir when he is of full age on account of the same ejectment, yet he has done you no wrong. So it would be a great hardship if we had no recovery against you. We demand judgment etc.

Scrope, J.[2] If [the plaintiff] had been ejected by some common person, against whom he could have an action, it would be no wonder

[1] Or Bereford's speech may stop at 'ejected you,' and then may follow an explanation by the reporter of the Chief Justice's observation.

[2] Or perhaps Bereford.

serretz[1] tenuz a respoundre[2]; mès ore ad l'eschetour fait ceo qe appent a soun office, qar terme ne toud[3] mye garde. Par quei soun recoverir est doné[4] vers vous.

Herle ad idem. Al auncien ley jeo n'avera nul recoverir si noun vers moun lessour, par qi qe jeo fusse enjetté[5]; et pur ceo qe dure fut[6] en cas ou le lessour rien n'avoit, si est remedie graunté[7] vers celuy qe me ad enjetté, par le 'occasione cuius[8] vendicionis etc.'[9] Mès ore sumes en tieul cas[10] ou nous ne poums avoir actioun vers aultre qe vers vous. Jugement etc., depus qe nous botoms avaunt vostre fait etc., si vous ne devetz a ceo respoundre.

Toud. fust chacé par la court a dire outre.

Toud. Nient nostre fait. Prest etc.

Et alii econtra.

1B. BERENGER *v.* BARTON.[11]

Un A. porta son bref de covenaunt vers Mestre Richard de Barton et counta q'a tort ne luy tient covenaunt entre etc. d'un mees et une carué de terre ove les apportinances en A. Et pour ceo a tort, qe mesme celui Richard lessa al avaundit A. cele terre a terme de x. aunz, par quel lees il fuist seisi ij. aunz etc. tauntqe l'eschetour le Roi entra par resoun de nounage un H. etc. et seisit la terre en la mayn le Roi etc.; par quei A. est sovent venutz a mesme celuy Richard et luy ad prié etc.; il ceo faire ne voilleit etc.; et issint est il alee countre covenaunt etc.

Toud. Il ad counté vers nous etc. a ses damages etc., et il n'ad mye counté qe nous luy avoms enfreint covenaunt. Jugement del counte.

Hervi. Yl dit qe il luy lessa la terre et parmy ceo lees fuist il seisi tauntqe l'eschetour etc., et qe sovent puis est venuz a lui et luy ad prié q'il tensit le covenant etc., il faire ne voilleit etc.; et la comence le tort le quel il afferme en vostre persone. Par quei etc.

[1] serriez *L*, *Q*. [2] mesqe vous fust escuse *S*. [3] tout *L*, *M*, *P*, *S*, *Y*. [4] *Om.* donc *D*, *L*, *M*, *P*, *Q*, *R*, *S*. [5] al aunciene ley jeo naveroy mye recoverir vers cely qe me engetteroyt mes vers moun lessour *L*; *sim. Q*, *R*. [6] duresse serreit *R*. [7] ordeine *L*, *Q*, *R*, *S*. [8] cuiusdam *R*. [9] ordine est le quare eiecit *X*. [10] en le cas *L*; en cas *Q*, *R*, *S*. [11] *Vulg.* p. 49. This version from *B*.

if the [defendant] were not bound to answer. But here the escheator has only done what pertains to his office, for a term does not override a right of wardship.[1] Therefore the plaintiff's action is given against you [the defendant].

Herle to the same effect: Under the old law I should have no recovery against anyone but my lessor, no matter by whom I were ejected; and because there was hardship in the case where the lessor had nothing, remedy is granted against my ejector by the writ 'occasione cuius vendicionis etc.'[2] But here we are in a case in which we can have no action against any but you. So we demand judgment whether, since we put forward your deed, you ought not to answer to this.

Toudeby was driven by the Court to plead over.

Toudeby. Not our deed. Ready etc.

Issue joined.

1B. BERENGER *v.* BARTON.[3]

One A. brought his writ of covenant against Master Richard of Barton, and counted that wrongfully he holds not a covenant made between them concerning a house and a carucate of land with the appurtenances in A. And wrongfully for this reason: whereas [the defendant] leased to [the plaintiff] this land for the term of ten years, by which lease he was seised for two years until the King's escheator entered by reason of the nonage of one H. and seized the land into the King's hand etc.; and [the plaintiff] has often come to [the defendant] and has prayed him [to keep the covenant], but he has refused and thus has gone against the covenant etc.

Toudeby. He has counted against us for damages, and he has not counted that we have broken the covenant. Judgment of his count.

STANTON, J. He says that [the defendant] leased to him, and that by this lease he was seised until the escheator [ousted him], and that since then he has often come and prayed [the defendant] to keep the covenant, and that [the defendant] would not do so; and that is the point at which begins the tort that he affirms in your person. Wherefore etc.

[1] Lit. 'term does not take away ward.' The termor's right to hold for the residue of the term was deferred until the wardship was at an end.

[2] In an abstract of this case the writ in question is called by a name better known to us, namely, *quare eiecit.*

[3] This second report has only been found in the Maynard MS. The first report is here printed for the first time.

West. Moun piere lesse sa terre a terme des aunz et oblige etc.; moun pere devie; vient le chief seignour et ouste le termer par moun nounage: jeo dy après l'age qe le termer avera son recoverer. Auxint par de cea.

Hervi. Jeo diss[eisis] H. Scrope et puis lesse cele terre a vous a terme; vient H. et porte l'assise et recovere; jeo devie; n'averetz vous pas vostre recoverer vers mon heir (*quasi diceret sic*)? Et issi n'ad il nul tort fait. Auxint par de cea.

Toud. Il n'ad pas dit qe ceo fuist nostre droit ne nostre heritage, et si il le voille dire, nous plederoms par la.

Herle. Ceo n'est pas mester a dire; qe, coment qe vous seietz avenu, soit ceo a droit, soit ceo a tort, de puis qe vous nous lessates la terre par vostre fet et nous sumes oustetz, sicome nous avoms dit, et autre voie etc., sy noun par cestui bref, jugement.

Toud. Vous n'avetz pas affermé cause de damage en nostre persone (*ut supra*).

Herle. Al aunciene lei avaunt le bref 'occasione talis vendicionis etc.' si averay jeo mon recoverer vers mon lessour, qi qe me ouste; et desicome nous sumes ousté de ceo bref 'occasione etc.' pur ceo q'il n'y ad pas aliené, et vous ne poietz nul tort en nostre persone assigner, et issint qe par nostre defaute la terre est recoveré,[1] et vous est obligié de nous garrantir vers toute gent, jugement si vous ne devietz r[espoundre].[2]

Toud. Vous tendray jeo covenaunt vers toute gentz qe vous oustent, la ou vostre recoverer vous est saulvié en lei vers eux, et la ou vous ne poietz nul tort en nostre persone assigner?

Herle. Le bref ne veot pas qe vous seietz somons a r[espoundre] de nul tort, mès de covenaunt enfreint etc., a quey vous ne r[espone]z nient. Jugement de vous, come de noun defendu.

Toud. Et nous jugement *ut supra.* Et vous aviez[3] conu qe vous fuistes seisi parmy nostre lees, et issint le covenant enfourny par qauntqe en nous est, si rien vers nous puissetz demaunder.

Ber. Jeo ne vy nule cause pur quei vous duissetz damage vers lui recoverir.

Herle. Les tenemenz furent en ascun temps en la seisine un H. Stormy, qe ceux lessa a Mestre Richard a terme de x. aunz, issint qe l'eschetour le Roi seisit les tenemenz en la mayn le Roi par resoun

[1] resceu *Vulg.*
[2] resceu *Vulg.*
[3] The scribe of this manuscript habitually writes *aviez* and *deviez* for *avez* and *devez*. Compare the *saulvié* for *sauvé* above.

Westcote. My father leases land for a term of years, and binds himself [to warranty] and dies; the chief lord comes and ousts the termor because of my nonage; I say that when I am of age the termor shall have his recovery against me. So here.

Stanton, J. I disseise Henry Scrope and then let the land to you for a term. Henry comes and brings the assize and recovers. I die. Shall not you have your recovery against my heir? And still [my heir] has done no tort. So here.

Toudeby. He has not said that the land was our right and our heritage. If he will say that, we will plead about that matter.

Herle. There is no need to say that; for, no matter how you came to the land, were it by right, were it by wrong, since you have leased it to us by your deed and we (as we have said) are ousted and have no way [of recovering] except by this writ, we pray judgment.

Toudeby. You have not affirmed any cause of damage in our person. (He repeated his argument.)

Herle. Under the old law, before the writ 'occasione cuius vendicionis' [was devised], I [the ejected termor] should have had my recovery against my lessor, no matter who ousted me. And since we are precluded from bringing the 'occasione cuius etc.' because there has been no alienation,[1] and since you cannot assign any tort in our person by way of showing that the land is recovered by our default, and since you are bound to warrant us against all men, we pray judgment whether you ought not to answer.

Toudeby. Am I to hold the covenant against all folk who may oust you, where a recovery against them is secured to you by the law and where you can assign no tort in my person?

Herle. The writ says that you are to be summoned to answer, not for a tort, but for a breach of covenant; and to that you make no answer. Judgment against you as undefended.

Toudeby. And we ask judgment as before. And you have admitted that you were seised by our lease, and so the covenant was performed so far as in us lies. Judgment, whether you can demand anything against us.

Bereford, C.J. I see no cause why you should recover damages against him.

Herle. The tenements were at one time in the seisin of one Henry Sturmy, who leased them to [the defendant] for the term of ten years; and the King's escheator seized the tenements into the King's

[1] This writ supposed an ejectment by one who had purchased from the lessor. See Reg. Brev. Orig. f. 227.

de nounage M. fuiz et heir H., qe tient en chef du Roi, par quei nous n'avoms actioune vers autre qe vers nostre lessour.

Toud. Pur quei ne eussetz vous countee qe H. lessa a nous et nous a vous ?

Herle. Il n'estut mye de prendre title de celuy qe nous ne puist doner avauntage ; ne rienz parmy luy clamoms, einz parmy nostre lessour Richard, et si nous n'eyoms recoverir par cestuy bref, nous sumes forclos d'actioune.

Toud. Quey avietz de ceo lees etc.

Les autres mystrent avaunt fait qe ceo testmoigna.

Toud. Nient soun fait. Prest etc.

Et alii econtra.

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 272d, Wilts.

Master Richard of Barton was summoned to answer Ingelram Berenger in a plea of covenant made between them concerning a messuage, a carucate of land, fifteen acres of meadow, forty of wood, and a hundred shillings' worth of rent in Cuueleffeld Sturmy.[1] The plaintiff complains that, whereas on [29 March 1305] Monday next after the Annunciation in 33 Edw. I., at Cuueleffeld, a covenant had been made between them, to wit, that the defendant delivered and demised to the plaintiff the said tenements, to hold to the plaintiff, his heirs and executors, from the said feast of the Annunciation to the feast of St. Peter at Chains [1 Aug.] then next, and also from the said feast of St. Peter for eight years then next, and the plaintiff had been seised of the tenements from the said feast of the Annunciation until, fifteen days after Michaelmas then next, Walter of Gloucester, the King's escheator, by reason of the minority of one Henry, son and heir of Henry Sturmy, who held the tenements of the King, seized them, together with other tene-

2. CHAMPYOUN *v.* ENGELTON.[2]

Replevine, ou l'awouerie fuist fete sour autre qe sour le pleintif ; qe pleda rien arere ; et pour ceo qe tiel plè ne gist pas en sa bouche, retourn fust agardé a l'awouant etc.[3]

Nota q'en un plee de prise des avers ou l'avowerie fust fait sur aultre qe sur celuy qe se pleynt.

Lauf.[4] Sire, nous vous dioms qe rien arere. Prest etc.

[1] Apparently mod. Cowsfield in Whiteparish. [2] *Vulg.* p. 50. Text from *A* : compared with *B*, *D*, *L*, *M*, *P*, *Q*, *R*, *S*, *Y* (f. 167d), and a short note in *X*. [3] Headnote from *B*. [4] Roust. *B*.

hand by reason of the nonage of the son and heir of Henry Sturmy, who held of the King in chief. So we have no action except against our lessor.

Toudeby. Why did you not count that H. Sturmy leased to us and we to you?

Herle. There was no need to deduce title from one who could give us no advantage. We claim, not through him, but through [the defendant] our lessor; and, if we cannot recover by this writ, we are debarred from action.

Toudeby. What have you to show the lease?

The others put forward a deed which witnessed it.

Toudeby. Not his deed. Ready etc.

Issue joined.

Note from the Record (*continued*).

ments, into the King's hand, and ejected the plaintiff; and that the defendant, though often requested to hold the said covenant, refused and still refuses. Damages are laid at a hundred pounds. A part of an indented writing is produced which witnesses that the defendant demised to the plaintiff all his tenements in the vill of Cuueleffeld which the defendant had by the demise of the said Henry Sturmy, to hold in form aforesaid, and that the defendant and his heirs would defend and warrant the tenements to the plaintiff his heirs and assigns throughout the whole time aforesaid.

The defendant, by Peter Tuly his attorney, after formal defence, says that the writing is not his deed, and of this he puts himself upon the country and upon the witnesses named in the writing.

Issue is joined, and a *venire facias* for six named witnesses and twelve jurors is awarded for the morrow of the Purification. The said writing remains in the custody of John Bacun, the King's clerk.

2. CHAMPYOUN *v.* ENGELTON.

When in a replevin action the avowry is upon a stranger for services arrear, the plaintiff cannot plead 'nothing arrear.' So held upon demurrer and a return awarded to the avowant.[1]

In a plea of replevin the avowry was made on one who was not the plaintiff.

Laufer. Sir, we say 'nothing arrear.' Ready.

[1] This case is Fitz. *Avowre*, 186, where it is remarked that such a plea implies a seignory in the avowant. Proper names from the record.

Roston.[1] A ceo ne devez avenir, qar vous estes estraunge et l'averrement qe vous tendet[2] poet avoir double entendement: ou purceo qe rien est due et issint rien ariere, ou purceo qe taunt fust due et qe ceo est pleynement payé. Mès a trier le quel les services pur queux nous avoms avowé sount duez ou nemye ne gist en bouche de un estraunge.[3] Par qei nous demandoms jugement si a cel res[pouns] etc.[4]

Herle ad idem. Si vous q'estes estraunge fustes[5] r[eceu] a tiel r[espouns], et trové fust par verdit d'enqueste qe taunt ariere, celi q'est privé et sur qi l'avowrie est fait purroit joyndre une altre enqueste, ou[6] serroit trové par aventure qe rien n'est ariere *non obstante* le primer enqueste; et issint serroit le jugement repugnaunt a un aultre, *quod esset inconveniens.*

Lauf. En jugement seoms.[7]

Stauntone.[8] Purceo qe vous avetz doné un r[espouns] qe ne gist fors en la bouche de pryvé, et vous estes estraunge etc., si agarde etc., qe vous ne preignez rien par vostre bref, et Johan Champyoun[9] eyt retourn des averes etc.[10]

Lauf.[11] Et nous jugement si nous ne poms tiel r[espouns] user. (Et ne voleit autre chose dire. Et avys fut a la court qe estraunge ne pout tiel r[espouns] user. Par qey fut agardé q'il ne preist rienz par son bref, einz en la mercy, et qe l'aultre ust retourn des avers.)

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 146d, Staff.

Thomas of Engelton was summoned to answer Richard le Champyoun in a plea of replevin. The plaintiff says that the defendant took two horses of the plaintiff's on [6 March 1308] Wednesday next before the feast of St. Gregory in 1 Edw. II., in the vill of Engelton,[12] in a place called the Sondforlong. Damages are laid at forty shillings.

The defendant avows the taking, for the reason that one John of Somerford holds of him two messuages and two virgates of land in the vill of Engelton by fealty and the service of eight shillings a year, of which services William, grandfather of the defendant, whose heir the defendant is, was seised by the hand of William, grandfather of John of Somerford, as by

[1] Russel *B*, *P*. [2] le r[espouns] qe vous tailletz *B*. [3] nemye vous qe estes a nostre avowerie estraunge ne poet estre partye *R*. [4] si a tiel respouns devez estre receu *L*, *Q*, *S*. [5] fussez *L*, *R*; fuisez *P*. [6] ne *A*; celui sour qi nous avoms avowe serroit resceu a respoundre autrefoitz ou *B*. [7] jugement serroms si tiel respouns ne gist en bouche destraunge *L*. [8] Hervi *B*. [9] de Champion *D*. *Most MSS. omit name.* [10] si agarde la court etc. *B*. [11] This end of the case from *R*. [12] Engleton and Somerford are close to Brewood.

Ruston. To that you may not get, for you are a stranger, and the averment that you tender may have a double meaning: either that nothing was due and so nothing arrear, or that something was due but was fully paid. But it does not lie in a stranger's mouth to try whether the services for which we have avowed are due or not. Wherefore we demand judgment whether [you shall be received] to this answer.

Herle to the same effect: If you who are a stranger were received to this answer, and if it were found by verdict of the inquest that something is arrear, the person upon whom the avowry is made might [hereafter] join another inquest,[1] in which perchance it would be found that, notwithstanding the first inquest, there is nothing arrear. Thus one judgment would be repugnant to another: which is absurd.

Laufer. Let us abide judgment.[2]

Stanton, J. Whereas you are a stranger and have given an answer which lies only in the mouth of a privy, this Court awards that you take nothing by your writ, and that [the defendant] have return of his beasts.

{*Laufer*[3] demanded judgment whether he could not employ such an answer, and he would plead no other plea. And the Court was of opinion that a stranger could not use that answer. Therefore it was awarded that he should take nothing by his writ, but should be in mercy, and that the other party should have a return of his beasts.}

Note from the Record (*continued*).

the hand of his very tenant; and for rent arrear since 20 Edw. I. [1291–2] the taking was made.

The plaintiff says that on the day of the taking nothing was arrear in respect of the said service, and this he offers to aver by the country; and thereof he demands judgment.

And for that it seems to the Court that the plaintiff, who, as appears by the form of the said avowry, is in this case a total stranger (*omnino extraneus*) to the defendant, is not to be admitted to such an averment to exclude the defendant from the arrears of the said service by the hand of his very tenant, it is awarded that the defendant go without day, and that the plaintiff take nothing by this plaint, but be in mercy for his false claim, and that the defendant have a return of the said beasts.

[1] Or 'might be received to answer on another occasion.'

[2] Or 'We will abide judgment whether such an answer does not lie in the mouth of a stranger.'

[3] In one book the case ends thus.

3. FEN *v.* SOMERCOTES.[1]

Cui in vita porté par le heir en la taile del alienacioun le second baroun sa mere et fesaunt mencioun del doun et du lees.

Nota q'en un bref de *descendere* et[2] fust tiel: 'Precipe R. de C. quod iuste etc. reddat J. de R. unum messuagium etc. quod C. de W. dedit S. de B. in liberum maritagium cum M., et in quod idem R. non habet ingressum nisi per F. de C. secundum virum predicte M., cui ipsa in vita sua contradicere non potuit, et quod post mortem predictorum S. et M. predicto J. descendere debet per formam[3] etc.'

Herle. Le bref en le *descendere* si est un bref de dreit en soun cas ordiné par statut al issue ceaux a queux[4] les tenemenz sount donetz en forme taillé, ou nul[5] remedie avaunt statut fust purveue etc.; le quel bref[6] ne deit fair nul mencioun de nul entré[7]; et, desicome cesti bref n'est my acordaunt a bref doné par statut,[8] n'entendomps mye qe a tiel bref devoms r[espoundre].

Toud. Nous dioms qe le mees etc. fust doné a S. et a M. en fraunk mariage, et l'alienacioun fait par le seconde baroun M., solom ceo qe le bref suppose; et, depus qe le bref est acordaunt a nostre cas, jugement si le bref ne seit asset bon.

Stauntone. Le bref serroit asset bon sauntz mencioun fair del entré par le seconde baroun.

Malm. Nous avoms en nostre bref ceo qe nous doune actioun, et ceo est la fourme en nostre persone taillé ensemblement ove l'alienacioun celuy qe fust de noun power de alienacioun[9]; jugement, si del hure qe nostre bref ne voet aultre paroulle[10] fors ceaux qe nous dounent actioun a demaunder, s'il ne soit asset bon. Et d'aultrepart, nous avoms qaunt qe est mester de avoir en un bref en le *descendere*.[11] Donqe semble qe pur le plus ne deit mye nostre bref abatre, la ou ceo est en affermaunt nostre actioun.

Scrop. Il[12] ad bref ordiné[13] ou le seconde baroun aliene, le quel bref voet avoir aultre issue qe cesti, et deux divers en un[14] il varie

[1] *Vulg.* p. 50. Text from *A*: compared with *B*, *D*, *P*, *L*, *M*, *P*, *Q*, *S*, *Y* (f. 106d), and a short note in *X*. [2] que *D*. [3] *Ins.* donacionis predicte *B*. [4] al issue a qi *L*, *Q*, *S*. [5] issue ou avaunt statut qant tenemenz donetz en fee taillee furent alienetz nul *B*. [6] *Ins.* doune par statut *B*. [7] *Ins.* qe statut ne le veut pas *R*. [8] *Ins.* al statut sur qele il est funde *L*, *Q*, *R*, *S*. [9] *Ins.* fere *M*, *B*, *Y*; de fere alienacioun *P*. [10] paroles *B*, *M*, *P*, *Y*. [11] en un forme de doun *R*. [12] *Ins.* y *B*, *D*, *L*, *P*, *R*. [13] *Ins.* en la seconde degree la *B*. [14] et qe deux prent en un *D*, *L*, *M*, *P*, *R*; qar qe deus prent en un *Q*; et qe deus divers prent en un *Y*.

3. FEN *v.* SOMERCOTES.[1]

A writ is abated on the ground that it is a hybrid between formedon in the descender and entry *sur cui in vita.*

A writ of formedon in the descender ran thus: 'Command R. C. that justly etc. he render to J. R. a messuage etc. which C. W. gave to S. B. in frankmarriage with M., and into which the said R. C. has no entry but through F. C., the second husband of the said M., whom in his lifetime she could not contradict, and which after the death of the said S. and M. ought to descend to J. R. by the form of the gift etc.'

Herle. The writ in the descender is a writ of right devised for a particular case, and is ordained by Statute for the issue of those to whom tenements are given in tail, whereas before the Statute there was no remedy provided[2]; and the writ should not make mention of any entry. And since the writ in this case does not accord with the statutory form, we do not think that we ought to answer to it.

Toudeby. We say that the house was given to S. and M. in frankmarriage, and that the alienation was (as the writ says) made by M.'s second husband; and, since the writ is accordant with our case, we demand judgment whether it be not good enough.

Stanton, J. The writ would be good enough without making mention of the entry through the second husband.

Malberthorpe. In our writ we have got what gives us an action, and that is the form of gift 'tailed' in our person together with an alienation by one who had no power to alienate. Judgment, whether the writ be not good enough, as it has in it no words except such as give us our action to demand [the tenement]. Besides, we have here all that it is necessary to have in a writ in the descender, and it seems that our writ should not abate for the surplusage when that surplusage makes for the affirmance of our action.

Scrope, J. There is a writ ordained[3] for the case in which the second husband alienates [the wife's land], which writ makes for

[1] Proper names from the record.

[2] One book adds 'where tenements given in fee tail were alienated.'

[3] One book inserts 'in the second degree.'

de ley.[1] Par quei il semble qe cesti bref est[2] mellé de deux brefs qe sount de dyvers natures, et[3] est encountre ley.

Herle ad idem. Si homme perde par soun bref en le *descendere*, il est barré de chescun manier de recoverir,[4] qe ceo est un bref de dreit. Mès en le bref q'est doné par l'alienacioun le seconde baroun si homme perdissit, jeo crey q'il pout recoverir par soun bref de dreit. Donqes a meller teux[5] brefs qe issint diversent, semble a moy qe ceo est graunt inconvenient de ley.

Toud. Par cas l'alienacioun fust fait avaunt statut. Donqe saunt ceo qe nous feissoms mencioun de nostre dreit taillé et auxint de[6] l'alienacioun etc., si porra legerement nostre dreit[7] estre perie.[8] Et d'aultrepart, nostre bref en li mesme comprent[9] la verité de tot le fait, et jeo ne sai encountre verité pleder. Par quai demaundoms jugement.

Hervi. Gardetz vos jours *ad audiendum iudicium* a la quinzeine de Seint[10] Hillaire etc.[11]

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 61d, Linc.

Robert, son of Walter del Fen de Magna Carleton, demands against John de Somercotes, parson of a moiety of the church of St. Peter of Saltfleteby, two messuages, seventeen and a half acres of land, five of meadow, and four and a half of pasture in Anderby and Hotoft which Walter of Oxcumbe gave to Robert son of Odo de Carleton in frankmarriage with Alice, daughter of the same Walter of Oxcumbe, and into which the said John had no entry save after the demise which Robert de Saleby, the second husband of Alice, whom she in his lifetime could not contradict, made to Robert de Shaddeworth, and which after the death of Robert, son of Odo and Alice, ought to descend to Robert son of Walter [the demandant], as cousin (*consanguineo*) and heir of Robert, son of Odo and Alice, by the form of the said gift. This statement of the writ is followed by the count, which says that Robert, son of Odo and Alice, was seised as of fee and right by the form of the said gift, and that from them the right descended to one Walter as son and heir, and from him to the demandant as son and heir. (*Note continued on the opposite page.*)

[1] issue qe cestui bref et deux issues prendre en un bref cest contrarie a ley *B.* [2] qest *D.* [3] *Om.* et *A*, *D.* [4] homme est a demander par bref de forme de doun en le descendere sil seit oste de ceu bref qest ordine en le case il est sanz recoverir par checun manere de bref *R.* [5] a melliour temps *D.* [6] *Om.* de *A.* [7] *Om.* nostre dreit *A*; nostre bref *D.* [8] perdu *B.* [9] counte *B*, *L*, *M*, *R*, *S*, *Y.* [10] suys *A.* [11] pleder et sic pendet *B.*

an issue different from that of this writ, and it is against law to comprise two issues in one writ. So it seems that this writ is a mixture of two writs which are of different natures, and therefore it is contrary to law.

Herle to the same effect. If a man loses in his writ of formedon in the descender, and so is ousted from the remedy ordained for his case, he is barred from every kind of recovery, for it is a writ of right [1] But if a man were to lose in the writ that is given upon the alienation by a second husband, I believe that he still might recover by writ of right. So it seems to me that it would be a great absurdity in law to mix up these two writs, which are of different natures.

Toudeby. Perhaps the alienation was made before the Statute [*de donis*]; and therefore, unless we made mention both of the entailed right and of the alienation, it well might happen that our right would perish. Besides, our writ comprises in itself the truth of all the facts, and against the truth I cannot plead. Therefore we demand judgment.

STANTON, J. Keep your days to hear judgment on the quindene of St. Hilary.[2]

Note from the Record (*continued*).

The tenant, by Gilbert of Saltfleteby his attorney, says that the demandant ought not be answered to this writ, for it contains in itself a double form, to wit the form of a writ of formedon (*formam brevis de donacione etc.*) and the form of a writ of entry; and, since each form requires a different issue, he prays judgment.

The demandant replies that his writ ought not to be quashed by this exception, for that the writ is apt for his case (*conveniens casu suo*) and not contrary to law; and, since he can obtain no writ better adapted for the demand of these tenements in this case than the said specially formed writ (*quam breve istud formatum etc.*), he demands judgment.

There was an adjournment to the quindene of Hilary with a saving for further argument. On that day 'for that the said Robert cannot deny that the said writ is of double form and of diverse nature (*diverse nature*),' it is awarded that the tenant go without day, and that the demandant take nothing by his writ, but be in mercy for his false claim.

[1] In the margin of one of our manuscripts (*P*) a doubt is expressed as to whether after formedon in the reverter a man can have any other writ.

[2] In the printed Register, f. 233b there are writs *sur cui in vita* devised for a demandant who claims an estate tail.

4A. BUKEHAM *v.* STAUNTON.[1]

Replevine, ou il avowa sour estraunge pur rente service : le pleintif dit q'il n'avoit qe terme : et pria eyde *et non habuit.*

Replegiari, ou le pleintif[2] n'avoit qe terme d'aunz et pria eyde et fuist ousté ; et puis pleda 'hors de son fee,' et alii econtra : quere etc.[3]

Un Alisaundre de P. se pleynt qe un Thomas de C. a tort prist un soun chyval etc.

Hunt. avowa la prise par la reson qe Cristien[4] teint de luy etc. ou la prise fust fait par fealté et par les services de xiiij. d. par an, des queux services mesme cesti Thomas fust seisi par my la mayn mesme cesti C. com par my la mayn soun verrai tenaunt, et pur les arrerages arere de x. aunz si avowe il etc. en soun fee etc.

Rostone. Il n'ad rien en ceaux tenemenz si noun terme des aunz du lees C.,[5] et pur ceo qu'il ne pusse mener ceaux services en jugement[6] saunt C., il prie eyde de[7] luy.

West. Si eyde vous dust estre graunté en ceo cas, ceo serroit par un de deux resons[8] : ou par reson de chatel, ou par reson des tenemenz.[9] Nent par reson du chatel, qar il sount le vos[10] ; ne[11] par reson des tenemenz, qe vous n'avietz nul estat etc.[12]

Pass. ad idem. Si C. q'est prié en eyde vensist en court et vousist joyndre ove Alisaundre et countrepleder[13] nostre avowerie, etc.,[14] ne porreit a ceo estre partie, pur la feblesse de soun estat. Par qei nous demaundoms jugement si celuy qe ne poet countrepleder ne estre partie a countrepleder nostre avowrie pusse eyde demaunder.

Hedone. Nous avoms veu un termer qe tient a terme des aunz voucher en un bref de dower, et soun voucher[15] receu de[16] court. Pur qei nent[17] eide prier ?

Berr. Le quel fust cel voucher ? Par reddur de ley ou par suffraunce de partie[18] (*quasi diceret* par suffrance etc.) ?

Hervi. Responez si vous voletz, qar vous n'averetz eide en ceo cas.

[1] *Vulg.* p. 50. Text from *A* : compared with *B*, *D*, *L*, *M*, *P*, *Q*, *R*, *S*, *Y*, (f. 167d), and a short note in *X*. [2] def. *B*. [3] Headnotes from *A* and *B*. In *B* an annotator says that this case is not law, and cites cases of the fifteenth century. [4] Cristiene *B*, *L*, *R* ; Cristiane *M*, *Y* ; Cristine *D*. [5] de lees un C. atte Stone *L* ; du lees Cristine *D*. [6] ceux tenemenz charger ne descharger *R*. [7] *Om.* de *A*. [8] voies *B*, *P*, *R*, *S*, *Y*. [9] reson de la tenance *R*. [10] qar le lessour est en pleyne vie *B*. [11] *Om.* ne *A* ; *ins. B*, *P*, *S*. [12] ne par reson de franktenement kar vous avez rien la einz *S*. *Ins.* issint qen lun cas et lautre vostre actioun vous est doune vers vostre lessour *B*. [13] et Alisaundre countrepledast *M*. [14] il *S* ; Alisaundre *L*, *M*, *P*, *R*, *Y*. [15] vouche *Y*. [16] en *M*. [17] ne put yl *R*. [18] *Om.* de partie *M* ; suffrance de la court *R*.

4A. BUKEHAM *v.* STAUNTON.[1]

If a termor brings replevin and the avowry is made upon his lessor for service arrear, the plaintiff cannot have aid of his lessor. *Semble* that the plaintiff, after admitting in an aid-prayer that he is a termor, may plead 'Outside his fee.' *Qu.* whether a termor can vouch.

One Alexander complains that one Thomas wrongfully took a horse of his etc.

Huntingdon avowed the taking, for the reason that Christiana holds of him the place where the taking was made by fealty and the service of fourteen pence a year; and that of these services Thomas himself was seised by her hand as by the hand of his very tenant; and for arrearages arrear for ten years he avows the taking [as good and lawful and] in his fee etc.

Ruston. [The plaintiff] has nothing in these tenements except a term of years by the lease of C.,[2] and without her he cannot bring these services into judgment. So he prays aid of her.

Westcote. If aid ought to be granted to you, that must be for one of two reasons: either because of the chattels or because of the tenancy. But you cannot have it by reason of the chattels, for they are your own,[3] nor by reason of the tenancy, for you have no estate; so in any case your action should be against your lessor.

Passeley to the same effect: If C., who is prayed in aid, were to come into court and to join with [the plaintiff] and to counterplead our avowry, [the plaintiff] could be no party to that because of the feebleness of his estate. Wherefore we demand judgment whether one who cannot counterplead or be party to counterpleading our avowry can demand aid.

Hedon. In a writ of dower we have seen a termor who held for term of years vouch, and his voucher was received by the Court. So why not his aid-prayer?

Bereford, C.J. How was that voucher allowed? By rigour of law or by sufferance of the party? (He meant that it was by sufferance.)[4]

Stanton, J. You will not have aid in this case. So answer if you please.

[1] This case is Fitz., *Ayde*, 161. Proper names from the record.

[2] The person upon whom the avowry was made.

[3] One MS. says, 'for the lessor is alive.' By 'the chattel' it seems to mean the term. But the other version is more intelligible.

[4] See our Vol. I. p. 149.

Rostone. Hors de soun fee. Prest etc.

Hunt. A ceo ne devetz avenir, qar en teisaunt si grauntastes la priveté entre nous[1] et C., sur qi nous avowames, et de qi vous priastes eyde.[2] Jugement, si ore de la seignurie nous pussetz estraunger.

Berr. Vous ne poetz dire qu'il se ad supposé privé a vous, ne C. nent le plus, pur[3] rein[4] qu'il ad dit unqore.[5]

Hunt. graunta l'averement etc.

Et *Roston* le revers.[6]

4B. BUCKEHAM *v.* STAUNTON.[7]

Nota ou le seygnure avowe pur serviz arere sur son tenant, le pleyntif dit q'il n'avoyt qe terme des aunz du lès mesme cely tenant, sur qi etc., et pria eide. Et non[8] habuit.

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 301d, Norf.

In a replevin action Thomas de Staunton was summoned to answer Alexander de Bukeham for taking a horse. The plaintiff, by Andrew de Bermyngham his attorney, lays the taking on [9 April 1309] Wednesday next after the Close of Easter in 2 Edw. II. in the vill of Herdewyke in the place called Mulgate; damages forty shillings.

The defendant avows, for he says that one Cristiana Avenaunte holds of him eight acres of land in the vill of Herdewyke by homage, fealty, and the service of fourteen pence a year; and that of the homage, fealty, and

5. SAYVILLE *v.* PONTEFRACT (PRIOR OF).[9]

Contra formam feoffamenti porté vers le seignour qe dit q'il tyent de luy par suwite a autre court et il l'avoit graunté a luy de fere la swite a cele court pur luy eser: et fuist chasé de respondre a ceo.

Un A. porta le *contra formam feoffamenti*[10] vers un Prior etc. et dit q'a tort lui avoit distreint[11] a siwte fair a sa court de C. etc.

[1] vous *R*; nous *A*, *B*, *M*, *P*, *S*, *Y*. [2] nous avoms avowe qaunt vous priastes eide de lui *B*. [3] par *A*. [4] qil suppose privete a vous ne a Cristiene nent le plus pur rien *P*; qil ad suppose prive a vous ne a Cristiene nent le plus pur rien *L*; qil ad suppose privete a vous ne C. nient le pluis pur rien *S*; Ber. Yl ne suppose ne luy ne Cristiene privee de vostre avowere pur rien *B*. [5] Et stetit verificatio *R* (*end of report*). [6] Hunt. En nostre prest etc. Et alii econtra *B*. [7] Text from *S* (Hil.): compared with *T* (Hil.). [8] *Om.* non, *which has been erased*, *T*. [9] *Vulg.* p. 51. Text from *A*: compared with *B*, *D*, *L*, *M*, *P*, *Q*, *R*, *S*, *Y* (f. 168), and a short version in *X*. Headnote from *B*. [10] *Om.* feoffamenti *A*. [11] *Om.* et . . . distreint *A*, *L*, *Y*.

Ruston. Outside his fee. Ready etc.

Huntingdon. To that you cannot get, for by your silence you conceded the privity between us and Christiana, upon whom we avow, and of whom you prayed aid. Judgment, whether you can now estrange us from our seignory.

Bereford, J. You cannot say that [the plaintiff] has admitted by anything that he has yet said that either he or Christiana is privy to you.

Huntingdon conceded the averment.

Ruston. The contrary.

4b. BUKEHAM *v.* STAUNTON.[1]

A lord avowed upon his tenant for services arrear. The plaintiff said that he had only a term of years by the lease of the tenant upon whom [the avowry was made], and he prayed aid. It was not granted.[2]

Note from the Record (*continued*).

service he was seised by the hand of Cristiana as by the hand of his very tenant; and because the service of fourteen pence was arrear for ten years, he took the horse, as well he might, in the said place, which is parcel of the said tenements and in his fee.

The plaintiff says that the defendant cannot avow as lawful the taking in the said place, for he says that the defendant took the horse outside his fee, and prays that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded for the quindene of Easter. There are subsequent adjournments with the *nisi prius* clause for the octave of Michaelmas and the octave of Hilary.

5. SAYVILLE *v.* PONTEFRACT (PRIOR OF).[3]

In a *contra formam feoffamenti*, a concession by the lord that the tenant may thenceforth for his greater ease do his due suit at a near instead of a remote court is treated as not binding on the lord.

One A. brought the *contra formam feoffamenti* against a Prior and said that wrongfully did he distrain him to do suit to his court at C.

[1] This may be a note of the preceding case. It occurs among the reports of Hil. 3 Edw. II. in some of our books.

[2] Or 'was granted.' Our books are divided.

[3] This case is Fitz., *Accion sur lestatut*, 24. Proper names from the record.

Herle. Nous vous dioms qe mesme cesti A. tent de nous etc. par siwte a nostre court a P.,[1] et pur ceo qe le Priour ad sa curt a C., et la quel est plus pris[2] a A. qe la court a P., si pria l'avauntdit Priour q'il li graunteit[3] qu'il feit[4] sa siwte qe a P. fust due a nostre curt de C.; et pur luy eiser le dit Priour lui graunta; et de quele siwte a P. les predecessours le Priour q'ore est furent seisiz avaunt la lymitacioun etc. Prest etc.[5]

Roston. Nous pleignoms qe vous nous avet destreint a siwte faire a vostre court de C., ou nous ne[6] nos auncestres cel siwete a C. fair ne soloms avaunt la limitacioun.[7] Prest etc. si vous le voletz dedire. Et d'aultrepart, nous ne poums estre partie a aultre averement etc. fors sur ceo qe vous nous etc.[8] a vostre court de C., ne[9] mesme la curt ne poet aultre averrement receyvre.[10] Et demaundoms jugement etc.

Herle. Ceo plee si cheet a descharger la tenaunce de siwte et nyent a trier en quel lieu[11] la siwte est due; et desicome nous voloms averrir qe vous tenet de nous[12] par siwte etc. et de cel siwte nos predecessours seisiz etc.[13] demaundoms jugement.

Berr. Si vous tenet de moy par siwte a ma court et vous me prietz qe jeo preigne ij. s. par an com en allowaunce de cele siwte de vous, des queux ij. s. par an jeo fu[14] seisi xl.[15] aunz, et[16] a dereyn les ij. s. sount ariere, et[17] poet estre qe jeo ne voille vos ij. s. mès avoir, qe jeo voil meutz[18] la sywte etc., jeo demaunderay ma siwte et l'averay.[19] Auxi de cest part. Coment q'il[20] vous ad[21] graunté de faire la siwte qe fust due a sa court de P.[22] a sa curt de C.[23] pur vous eyser, unqore demoert la siwte tote veirs[24] due a P. q'ele ne li fait[25] fors en allowaunce d'aultre[26] etc. {Coment[27] q'il eit graunté a faire[28] la siwite a la court de C. q'est due a la court de P., la quele est faite en allouwance dil autre, serroit il pur ceo destreint a faire[29] la siwite a C. (*quasi diceret non*) ?[30]}

Rouston. Qe luy ne ses predecessours etc. ne furent de cele siwte seisi a la court de P.[31] avaunt la lymytacioun, prest etc.

Et alii econtra.[32]

[1] Poumfreit *L*; *sim. D, M, P, S, Y.* [2] pres et plus esee *L, R, S.* [3] grauntast *Al. Cod.* [4] freit *Al. Cod.* [5] le Priour fuist seisi puis la lymitacioun de statut *B.* [6] *Ins.* nul de *B.* [7] *Ins.* de statut *B.* [8] *Ins.* avietz destreint a sute faire *B.* [9] *Om.* ne *A.* [10] joyndre *B.* [11] ley *A*; lieu *B, D, L, M*; leu *P, R, S.* [12] *Ins.* et *A, D.* [13] *Ins.* et *A.* [14] fusse *M*; suy *R*; sei *Q*; su *D.* [15] lx. *L, S.* [16] *Om.* et *A, D.* [17] od *L.* [18] mesqe *M.* [19] arere, jeo destreigne, vous me tendez les deux s., jeo ne les veu my, en ceo cas jeo recoverey bien la seute *R.* [20] il *A.* [21] eit *L, R.* [22] *Ins.* et *A.* [23] *Ins.* et *A.* [24] vois *M*; foiz *Y*; vers *P*; tut temp *R*; tut tenps *S*; de tot temps *L.* [25] due a sa court de P. de pus qele est fete a sa court de C. *R*; qele nest fet a curt de C. *L*; *sim. S*; qe ele nest fete *Y.* [26] del autre *P, Q, R, S.* [27] *This version from B.* [28] graunte affaire *B.* [29] affaire *B.* [30] Ber. ad idem. Si jeo prengne fin pur ma sute xl. aunz uncor pusse jeo aver la sute. *X* (*abstract*). [31] P. *A, D, L R, S, X*; Pumfreyde *Y*; C. *B, M, P, Q.* [32] Herle le revers. *L, M, P. S, Y*

Herle. We tell you that the same A. holds of us etc. by suit to our court at P.; and, because the Prior has a court at C. which is nearer and handier to A. than is the court at P., the said A. prayed the Prior to grant to him that he might do at our court of C. the suit due at P.; and to ease him the Prior granted this; and of the suit at P. the predecessors of the Prior were seised before [1] the date of limitation mentioned in the statute. Ready etc.

Ruston. We complain that you have distrained us to do suit to your court at C., whereas neither we nor our ancestors were wont to do suit at C. before the date of limitation. Ready [to aver by the country] if you will deny it. Moreover, we cannot be party to any averment other than that you have distrained us to do suit to your court at C., nor indeed would this Court receive any other averment. We pray judgment etc.

Herle. The nature of this plea is to discharge the tenancy of suit, and not to try in what place suit is due; and, since we are willing to aver that you hold of us by suit etc., and that of this suit our predecessors were seised etc., we pray judgment.

Bereford, C.J. If you hold of me by suit to my court, and you pray me to take two shillings a year in allowance of this suit of yours, and of these two shillings a year I am seised for forty years, and then at last the two shillings are arrear, or perhaps I do not want to have your two shillings any more, but prefer the suit, then I shall demand my suit and have it. So here. Although for your ease he has conceded that you may do to his court at C. the suit due to his court at P., still all along the suit remains due at P., for it is due at C. only by way of allowance for the other. {Notwithstanding [2] that he has, for your ease, granted to you that you may do at C. the suit due to his court at P., still the suit all along remains due at P., though it be done at C., being done in allowance for the other. And could he be distrained to do the suit at C.? (He meant that he could not.)} [3]

Ruston. Neither he nor his predecessors were seised of this suit to the court at P.[4] before the limitation. Ready etc.

Issued joined.

[1] One manuscript says 'after.' But this seems a mistake. See Stat. Marlb. c. 9.

[2] An alternative end for the speech.

[3] An abstract of the case says: 'If for forty years I take fine for my suit, still I can have the suit.'

[4] Some MSS. say 'at C.'

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 316, York.

Robert, Prior of St. John the Evangelist of Pontefract, was attached to answer John de Sayville of a plea why (whereas by the common counsel of the King's kingdom it is provided that none be distrained by reason of their tenements to make suit to the courts of their lords, unless by the form of their feoffments they be bound to that suit, or they or their ancestors holding those tenements were wont to do it before the first passage of [Henry III.] into Brittany) the Prior distrained John to do suit to the Prior's court at Berneslay against the form of the said provision etc. The plaintiff says that whereas he held two messuages, a hundred and twelve [1] acres of land, eight of meadow and twenty of wood in Doddewrthe by homage, fealty, and the service of seventeen shillings and six pence a year for all service, the Prior distrained him to do suit to the said court; and that therefore he on [3 Oct. 1308] the Thursday next after Michaelmas in 2 Edw. II. at Berneslay, in the presence of Robert de Boseville, Thomas de Sayville, Robert de Barneby and others, delivered a royal prohibition to the Prior; and that nevertheless the Prior distrained him by his oxen, cows and other beasts to do the said suit from the three weeks to three weeks against the form of the said provision and against the prohibition: damages, twenty pounds. (*Note continued on the opposite page.*)

6A. CURZUN *v.* CAVE.[2]

Contra formam feoffamenti, ou il covent mye al pleintif moustrer feoffement, mès le defendaunt r[espoundra].

Contra formam feoffamenti, ou le defendaunt pria eide, et habuit.

Un A. porta le *contra formam feoffamenti* [3] vers B. et E.[4] sa femme et dit q'a tort lui avoyent destreint a siwte faire a la curt de C. encountre le forme de soun feffement, par la ou luy ne ses auncestres cele siwte faire ne soleient avaunt le primer passage etc.

Wilb. Soun bref et soun counte veot qe nous luy avoms destreint encountre la forme de soun feffement, par quei nous prioms q'il moustre soun [5] feffement. (Et fust dit q'il ne covendreyt mye.) [6]

Wilb. dit q'il tient de luy et de E. sa femme com del dower E. et de le heritage P. et C., et par sa siwte a la court avantdit, et de quele siwte les auncestres les avantditz P. et C. furent seisiz avant la limitacioun etc.

[1] 'Twelve' uncertain. [2] *Vulg.* p. 52. Text from *A*: compared with *B*, *D*, *L*, *M*, *P*, *S*, *X*, *Y* (f. 168). Headnotes from *A* and *B*. [3] statuti *D*. [4] Cristiene *L*. [5] Will. Moustretz vostre *B*. [6] Wilb. Feffement chet en especialte, moustrez le. Et ne fu pas chace. *X*.

Note from the Record (*continued*).

The Prior, by his attorney, after formal defence, says that John cannot, in this behalf discharge the tenements of the said suit, for his ancestors, holding those tenements, were wont to do the said suit to the Prior's court at Pontefract before the time limited in the writ, until one . . Prior, the defendant's predecessor, at the request of one . .[1] ancestor of John, granted to John's ancestors that they might do the said suit for the said tenements to the said manor of the Prior at Berneslay, to the relief and easement of the tenants, because the manor of Berneslay was nearer than the vill of Pontefract to the tenements charged with the suit. And the Prior says that his predecessors were seised of the suit to the Prior's court at Pontefract before the time aforesaid, and afterwards to the Prior's court at Berneslay as of one and the same suit in manner aforesaid; and this he is ready to aver.[2]

John denies that the Prior's predecessors were seised of the said suit for the said tenements before the time aforesaid as the Prior says; and he prays that this be inquired by the country.

Issued is joined, and a *venire facias* from the venues (*de visnet'*) of Berneslay and of Pontefract is awarded for three weeks from Easter.

6A. CURZUN *v.* CAVE.[3]

In a *contra formam feoffamenti* the plaintiff need not produce a charter of feoffment. The action being against a doweress and her husband, and seisin before the time of limitation being denied, the defendants have aid of the heir.

One A. brought the *contra formam feoffamenti* against B. and E. his wife, and said that wrongfully had they distrained him to do suit to their court at C. against the form of his feoffment, whereas neither he nor his ancestors were wont to do this suit before the first passage [of Henry III. into Brittany].[4]

Willoughby. His writ and count state that we have distrained him against the form of his feoffment. Therefore we pray that he show his feoffment. (But it was held that there was no need for this.)

Willoughby said that [the plaintiff] holds of B. and E. his wife as of E.'s dower and of the inheritance of P. and C., and by the said suit of court; and of this suit (said he) the ancestors of P. and C. were seised before the time of limitation. Ready etc.

[1] The names are represented by two dots.

[2] Dodworth lies a couple of miles from Barnsley, and some fifteen from Pontefract.

[3] This case is Fitz., *Accion sur le statut*, 25.

[4] Stat. Marlb. c. 9.

Rust. Nent avaunt la limitacioun, prest etc.

Wilb. A cest averement ne poums estre partie sauntz P. et C. as queux la revercioun appent etc.[1] Et prioms eyde etc.

Et habuit.

6B. CURZUN *v.* CAVE.[2]

Une femme tenant en dowere pursiwit destresce.[3] Le tenant porta la prohibicion. Ele destreinit com avaunt. Il suwy l'attachement. La femme vint en court et dit q'ele ne demande nent a tort einz a dreit,[4] par la reson q'ele est seisi en noun de dower de un manier qe fut en la seisine W. Tatesale,[5] le quel W. fut seisi de la sute com appurtenant a cele manier par my la mayn mesme celi et ses auncestres, et demanda jugement.

Rust. Nent seisi. Prest etc.

Wilb. A ceo ne pooms estre partie sanz les heirs W. et prioms eide de eux. (Et habuit auxilium.)

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 310d, Linc.

John de Cave[6] and Eva his wife were attached to answer Robert le Curzun[7] of a plea why (whereas by the common counsel of the King's kingdom etc.[8]) they distrain him to do suit to their court at Toft by (*iuxta*) Witham[9] against the form of the said provision and against the tenor of the King's mandate directed to them. Robert complains that, whereas he holds of John and Eva a messuage, twelve acres of land and one of meadow, in Wytham by fealty and the service of four shillings a year for all service, John and Eva, beyond that service, distrained him to do suit to their court at Toft from three weeks to three weeks, which suit he and his ancestors were not wont to do before the time limited etc.; and that therefore on [11 Oct. 1307] Wednesday next after St. Denis in 1 Edw. II. at Toft, in the presence of Robert Freman, Henry Springe, Geoffrey son of Gilbert and others, he delivered to John and Eva the King's writ of prohibition and inhibited them from distraining him for the suit; and that they, despising the royal prohibition, none the less distrained him as before to do the suit against the provision etc. and against the tenor of the King's mandate: damages, ten pounds. (*Note continued on the opposite page.*)

[1] *Om.* as . . . etc. *B.* [2] Text from *M*: compared with *P*, *T*. [3] pur seute destr' *T*. [4] dire *M*; droit *P*, *T*. [5] Tassele *P*. [6] *Coue* or *Cone* in the first instance, but *Cave* or *Cane* below. [7] Also *Curzon*. [8] As in our last case; above, p. 95. The form of the prohibition used in these cases will be found in Reg. Brev. Orig. f. 176. [9] There is a Toft close to Witham, a little north of Stamford.

Ruston. Not before the limitation. Ready etc.

Willoughby. We cannot be a party to that averment without P. and C., to whom the reversion belongs. We pray aid etc.

Aid granted.

6B. CURZUN *v.* CAVE.[1]

A woman holding in dower distrained for suit.[2] The tenant brought the prohibition [*contra formam*]. She distrained as before. He sued an attachment. She came into court and said that she demands, not wrongfully, but rightfully, for the reason that she is seised in name of dower of a manor which was in the seisin of R. Tattershall, who was seised of the plaintiff's suit as appurtenant to that manor by the hand of the plaintiff and his ancestors. And she demanded judgment.

Ruston. Not seised. Ready etc.

Willoughby. To that [averment] we can be no party without the heirs of R., and of them we pray aid. (And she had it.)

Note from the Record (*continued*).

John and Eva, by Hugh of Depedale their attorney, after formal defence, say that Robert holds the tenements of them by reason of the manor of Toft, which they hold in Eva's dower by the endowment of her first husband, Robert de Tateshale, and of the inheritance of Thomas de Cailly, Isabel wife of John de Orreby, and Joan sometime wife of Robert de Driby, cousins and heirs of Robert de Tateshale. And they say that lawfully they distrain the plaintiff for the said suit, for the said Robert de Tateshale was seised thereof, and his ancestors were likewise seised before the first passage of Henry III. etc.; and this they are ready to aver; and thereof they pray judgment.

The plaintiff says that his ancestors never were wont to do that suit for those tenements before the said passage; and he prays that this be inquired by the country.

And since John and Eva cannot abide (*expectare*) the said averment without the heirs of Robert de Tateshale, therefore be they summoned for the octave of Hilary. At that day the parties came, but the heirs did not. It is awarded that the defendants answer without them. The plaintiff, as before, says that his ancestors never were wont to do that suit for those tenements before the said passage; and he prays that this be inquired by the country. Issue is joined, and a *venire facias* is awarded for the octave of Trinity.

[1] Apparently another report of the same case.

[2] Or 'pursued a distress.'

7. ANON.[1]

Nota de relès.

Nota qe la ou une conisaunce est fait en court sur le relès et quiteclaimance il ne covent mye a dire de qi a tenir, ut patet inter Priorem de Deltone[2] etc. Et ratio est pur ceo q'il ne prent estat par my la conissaunce, einz est soun estat precedent affermé etc.

{La[3] ou fin est levé sur garrantie de chartre il ne covent pas dire de qi tenir: par *Ber.*}

8. HAKEBECHE *v.* HAKEBECHE.[4]

Nuper obiit, ou il demande pur ceo qe lez tenemenz sount departables, ou il suffit a moustrer coment departables; et s'il alegge q'il sount partables par usage du fraunch[ise], a traverser ceo point.

Adam le fitz Robert de Hakkeboge[5] porta un *nuper obiit* vers Thomas Kakkebog,[6] et demaunda la moyté de un mies[7] etc., et counta de la seisine lour comune auncestre Adam par noun; qe[8] fust seisi de l'entier etc. De A. descendit le dreit etc. a A. et a T. com a ij. fitz et un heir, pur ceo qe les tenemenz sount partables,[9] et dount Thomas teint le tot et Adam rien n'ad.

Herle. Cest encountre comune ley qe tenemenz sount[10] partables entre madeles: par qei covent q'il dient coment partables et coment departiz et entre queux.

Hedon. Nous vous dioms qe ceaux tenemenz etc. sount tenuz del Evesqe d'Ely[11] de soun fee de T. et del Priour de Lewes de soun fee de H. en sokage; et dyoms qe toutz les tenemenz qe sount dedenz les avauntditz fees et qe sount tenuz en sokage sount partitz et partablez; et vous dioms outre qe ceaux ov altre tenemenz si furent en aschun temps en[12] la seisine une Code,[13] qe les tient en sokage etc.

[1] *Vulg.* p. 52. Text from *A*: compared with *B*, *D*, *L*, *M*, *P*, *S*. [2] Waltone *B*, *S*; Doltone *D*; Dultone *M*, *P*; Priorisam de Daltone *L*. [3] This version from *X*. [4] *Vulg.* p. 51. Text from *A*: compared with *B*, *D*, *L*, *M*, *P*, *Q*, *S*, *Y* (f. 138), and a short note in *X*. Headnote from *A*. [5] Haket *B*, *Q*; Hokebeg' *L*; Hakebek' *M*, *X*; Hakebake *P*; Hakebegg' *S*. [6] Hakebeg' *L*; Kalkebog' *M*; Kalkeb' *P*; Hakebot' *Q*; Hackeling' *S*. [7] del manoir *B*. [8] et *A*; qe *Al. Cod.* [9] A shorter introductory statement, *B*. [10] soient *B*. [11] Cicestre *B*; C. *Al. Cod.*; de tel evesque *P*. [12] ou *A*. [13] *Or* Cede *A*; Ode *D*, *L*; Oude *Y*; Ede *S*; W. *B*, *M*, *P*, *Q*.

7. ANON.

Fine by way of release.

Where a conusance is made in court upon a release and quitclaim there is no need to say of whom the tenements are to be holden, as appears in the case of [a certain] Prior etc. The reason is that no estate is taken by the conusance, but an existing estate is affirmed.

{Where[1] a fine is levied on a writ of *warantia cartae* it is not proper to say of whom the land is to be holden: per BEREFORD, C.J.}

8. HAKEBECHE *v.* HAKEBECHE.[2]

In a *nuper obiit* the demandant avers that all the socage tenements within a certain fee are partible among sons, adding that the tenements in demand were partitioned in a specific instance. This averment is traversed.

[Thomas], son of Robert Hakebeche, brought a *nuper obiit* against [Adam] and demanded the moiety of a messuage etc. and counted on the seisin of their common ancestor, one Adam, who was seised of the whole. From him the right descended to [the demandant and the tenant] as two sons and one heir, because the tenements are partible. And [the tenant] holds the whole and [the demandant] has nothing.

Herle. It is against common law that tenements should be partible among males. So it behoves you to say how they are partible, and how and between whom partitioned.

Hedon. We tell you that they are held of the Bishop of Ely as of his fee of T. and of the Prior of Lewes as of his fee of H. in socage. And we say that all the tenements which are within the said fees and are holden in socage are partitioned and partible; and further that these with other tenements were once upon a time in the seisin of one A., who held them in socage as above; and from A.

[1] From an ancient abstract of the cases of this term.

[2] Proper names from the record. The report is simplifying the facts when it supposes the parties to be brothers.

ut supra; de Code descendit etc. a C., de C. a D., de D. a K,[1] a Adam.[2] Reignald, et William etc., entre queux la departie[3] fust fait, issint qe R. avoit a sa purpartie taunt etc., et W. taunt etc., et Adam avoit les tenemenz dount nous demandoms la moité, et issint partiz et partables par la r[esoun] *ut supra*, prest etc.

Denom.[4] Sire, il suffisereit[5] a dire qe les tenemenz sount partables sauntz plus dire, qar[6] si un homme portast le *nuper obiit* des tenemenz qe sount tenuz en gavilkynde en Kent, en ceo cas le demaundaunt recovereyt etc., tot ne furent il unqes departiz; et la cause est pur ceo qu'il sount departables de dreit.[7] Auxint de ceste part, del houre qe nous voloms averrir q'il sount tenuz en sokage, et totes les terres q'en sokage sount tenutz, en qi mayns qu'il seient, solom la tenance en sokage sount departables de dreit et qe sount dedenz les feez avauntditz.[8] Par quei il semble q'il ne bosoigne mye[9] a dire entre queux departitz, mès departables *ut supra*.

Malm.[10] La cause par la ou il nous oustent[11] de la comune lay si est qe totes les terres qe sount tenuz par la en sokage del Evesqe et del Priour sount partitz et partablez. Sire, nous vous dioms qe nent partitz ne partables, prest etc.[12]

Pass. ad idem.[13] Tot fust issint qe les tenemenz qe vous ore demaunndetz furent partitz entre Adam et Raynald et William, cele departison ne vous doune title d'actioun en ceo cas, saunt ceo qe vous ne pusset moustrer qe[14] tutes les terres tenuz *ut supra* sount partitz et departables[15] etc., prest etc.

Hedon.[16] Qe ceux tenemenz qe nous demaundoms et ceux qe sount tenuz *ut supra*[17] sount partiz et partables, prest etc.[18]

Malm. Le revers.

Et[19] credo[20] per raciones prenominatas[21] quod si inventum fuerit quod tenementa que[22] sunt de feodo predictorum etc. non sunt partita nec[23] partibilia, quamvis per eandem inquisicionem inventum fuerit quod tenementa petita fuerint partita, adhuc[24] nichil capiat per breve suum.[25]

[1] *Ins.* de K. *D*, *Y*. [2] *Ins.* et suffit a dire departable saunz dire coment departable ou departitz *B*, *and end speech*. [3] purpartie *M*. [4] Denu' *D*; J. Denh' *Y*; Denon *L*; Hengh. *B*; Ingh. *M*: Hyngham *P*; Kyngh. *Q*; Hengham *S*. [5] suffireit *D*, *M*, *Y*. [6] Begin the speech here, *B*. [7] departables ut dicitur *D*. [8] Auxint par de cea, ceux qe sount deinz les fees etc. solome la nature de la tenaunce en socage, quele chose nous voloms averer *B*. [9] qil nestut pas *B*. [10] *Om.* Malm. *Y*. [11] estent *A*, *D*: oustent *Al. Cod.* [12] Priour sount departables et autre chose ne dyent, par quei nous demaundoms jugement *B*. [13] *Om.* this speech *B*. [14] de *A*; qe *Al. Cod.* [15] *Ins.* et ceo avoms traverse *D*, *M*; *sim. L*, *S*. [16] *Om.* this speech *A*, *P*; supplied from *M*, *L*, *Q*, *S*; *sim. D*. [17] *Om.* et . . . supra *S*. [18] *End of report Q*. [19] *Om.* this note, *B*, *Q*. [20] Et videtur *L*, *S*. [21] predictas *L*, *S*. [22] quod quedam *S*. [23] *Om.* partita nec *L*. [24] adhuc *D*, *L*; Ad[am] *S*; *om. P*. [25] *Ins.* et ideo queretur *L*; et ideo quere *S*.

they descended to B., and from B. to Adam, Reginald and William etc., between whom partition was made, so that Reginald had for his share so much, and William so much, and Adam had the tenements whereof we demand the moiety: and thus are they partible and partitioned for the reason aforesaid. Ready etc.

Denom.[1] Sir, it would be sufficient to say without more that the tenements are partible, for if a man brought a *nuper obiit* for tenements which are held in gavelkind in Kent, he, the demandant, would recover, although the tenements had never been partitioned. And the reason is that they are partible of right. So it is in this case, since we are willing to aver that they are held in socage and that all the lands which are within the aforesaid fees and of the nature of socage are partible of right, in whosesoever hands they may be. So it appears that there is no need to say between whom they have been partitioned, but only that they are partible of right, as aforesaid.

Malberthorpe. The reason that they urge for putting us outside the common law is that all the lands in those parts held of the Bishop and the Prior are partitioned and partible. Sir, we say not partitioned nor partible. Ready etc.

Passeley to the same effect: Even if these tenements that you now demand were, as you say, partitioned between Adam, Reginald and William, that partition does not give you title, unless you can show that all the lands held as above are partitioned and partible, and that [averment] we have traversed.[2]

Hedon. The tenements that we demand and those that are held as above are partitioned and partible. Ready etc.

Malberthorpe. The contrary.

And I believe for the reasons aforesaid that if it be found that [some of] the tenements which are of the fees of the said [lords] are not partitioned nor partible, he will take nothing by his writ, though by the same inquest it be found that the tenements now demanded have hitherto been partitioned.[3]

[1] Or 'Ingham.' It is not easy to see what part this advocate is playing. If he is for the demandant he seems concerned to modify Hedon's averment. Apparently the reporter holds, as will be seen below, that Hedon was injudicious.

[2] This last phrase is not in all our books.

[3] This note is not in all the manuscripts, and in some it ends with 'and therefore *quaere*.' For the issue entered on the record see next page.

{*Hedon.*[1] Ceus tenemenz sunt de fé le Evesqe de C., et toz les tenemenz deinz mesme le fé tenuz en sokage sunt partables. (Et moustra entres queus departiz. Set credo q'il ne covendra pas dire entre queus departiz.)

Malm. La ou vous eidez par cause de fé, la dioms qe toz les tenemenz tenuz en sokage de cel fé, ne sunt pas partables. Prest etc.

Hedon. Qe toz ceus tenemenz et toz les tenemenz du fé tenuz *ut supra* sunt partables. Prest etc.

Alii econtra.}

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 20, Norf.

Thomas, son of Adam de Hakebeche, demands against Adam, son of Robert de Hakebeche, a moiety of a messuage and of two hundred acres of land in Enemethe as his right and his reasonable share, which falls to him of the inheritance of Adam de Hakebeche, father of the demandant and grandfather of the tenant, whose heirs they are, and who lately died (*nuper obiit*). The count states that Adam, the common ancestor, was seised of the whole in his demesne as of fee and of right in the time of Edward I. and lately died; and that from him the right descended to the demandant and one Robert as sons and heirs, for that the tenements are partible among heirs male; and that from Robert the right of his purparty descended to the tenant; and that the tenant holds the whole and deforces the demandant of his reasonable share.

The tenant, after formal defence, prays that the demandant show how (*qualiter*) the tenements are partible and among what heirs partitioned.

The demandant says that a certain part of the tenements is holden of the Bishop of Ely and a certain part of the Prior of Lewes; and that all the tenements which are holden of the fees of the Bishop and Prior in the said

9. CAVE *v.* BAGGE.[2]

Ou le tenaunt avoyt fait defaute et dit q'il teint la terre en vileinage, l'altre alegge par chose de recorde q'il r[espoundit] cum tenaunt et qe cely, qy vileyn il clama estre, desclama etc. Et le bref abaty.

Un Johan Cave[3] porta soun bref vers Johan Bagge[4] qe avoit fait defaute, et qe vient en court et dit qu'il fust le vilein Thomas Bardolf[5] etc., et demaundoms jugement du bref.[6]

[1] *From X.* [2] *Vulg.* p. 51. Text from *A*: compared with *B*, *D*, *L*, *M*, *P*, *Q*, *S*, *Y* (f. 138d), and a brief note in *X*. [3] Johane Saunk *S*; de Cave *Y*. [4] Bagga *Y*. [5] Bagot *Q*. [6] Johan Cap' port bref vers un tenaunt qe fist defaut, et puis vient en court par le graunt cape et dit qil fuist villein un tiel et demaunda jugement du bref *B*.

{*Hedon.*[1] The tenements are of the fee of the Bishop of C., and all the tenements held in socage in the same fee are partible. (And he showed between whom partitioned. But I believe that it was not right[2] to say between whom partitioned.)

Malberthorpe. Whereas you aid yourself by the [usage] of the fee, we tell you that all the tenements held in socage of that fee are not partible. Ready etc.

Hedon. All these tenements and all the tenements of the fee held as above are partible. Ready etc.

Issue joined.}

Note from the Record (*continued*).

vill are holden in socage and are partible etc. He says also that a certain [blank] father of the said Adam, of whose seisin the demand is made, had three sons, namely, Adam, Reginald and William; and that the tenements were partitioned between them, so that Reginald had a messuage and forty acres and William a messuage and forty acres by way of the purparties falling to them by the said inheritance. And that so it is, he is ready to aver.

The tenant says that the demandant can claim nothing for the said reason by way of purparty in these tenements; for he says that the tenements which are of the fees of the Bishop and Prior in the same vill are not partible as the demandant asserts; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the octave of Hilary.

Another entry (r. 363) on the same roll shows the same demandant endeavouring to establish against the same tenant the partibility of certain tenements in Quappelade.[3] In this case, however, the common ancestor is Isabella de Quappelade, the mother of the demandant and grandmother of the tenant.

9. CAVE *v.* BAGGE.[4]

In an action for land by *A* against *B*, the latter pleads that he is villein of *X*. The writ is abated, although *A* desires to prove that in an action against *B* and *X* the tenancy was disclaimed by *X*, and that *B* answered as tenant.

One John Cave brought his writ against one John Bagge, who made default and afterwards came into court by the grand *cape* and said that he was the villein of Thomas Bardolf and demanded judgment of the writ.

[1] From an ancient abstract.

[2] In his client's interest or as tending to confuse the issue?

[3] Whaplode, Linc., is not far from Emneth, Norf.

[4] Proper names from the record.

Hedon. Par taunt ne poet nostre bref abatre, qe enz ces hures si porta une Elene [1] un assise de novele diseisine de mesmes les tenemenz etc. vers Thomas B.[2] et Johan Bagge, ou Thomas vient et dit qe rien ne clame,[3] et Johan r[espoundit] com tenaunt; et, desicome en court qe porte recorde Johan r[espoundit] com tenaunt et accepté a par taunt fraunc et par Thomas qe vileyn il fait,[4] demaundoms jugement si par conissaunce de vileynage,[5] et nomement a celuy qe le accepta [6] fraunk etc.,[7] pusse ore nostre bref abatre. Et d'aultrepart, si Thomas vensist [8] en court et se voleit faire privie a la tenaunce, com a dire qe Johan fust soun vileyn, il ne serreit pas a ceo r[eceu].[9] Nent plus poet Johan devoluper sey [10] de la tenaunce.

Hoc non obstante le bref se abati par agarde des justices.[11]

Note from the Record.

De Bance Roll, Michaelmas, 3 Edw. II. (No. 179), r. 331d., Not.

John de Cave de Northburghe demanded against John Bagge three messuages, six bovates and thirty-six acres of land, five of meadow and forty of wood in Gedelingge, Stoke Bardulf, Nether Colewyk and Carleton by (*iuxta*) Notingeham [12] as his right etc., so that the sheriff was commanded to summon him to be here on the quindene of Hilary in 2 Edw. II. to answer John de Cave of the said plea.

On that day Bagge had himself essoined and had a day by his essoiner on the quindene of Trinity last past. On that day he made default, and the sheriff was commanded to take the tenement into the King's hand, and to summon him (Bagge) for this day. And now the sheriff witnesses the

10A. CONINGTON *v.* LYOUNS.[13]

Per que servicia, ou cely qi services furent grauntez mist avaunt relès l'auncestre le conisour; et le conisour dit qe l'auncestre morust seisi pus la confectioun etc. et il seisi après sa mort etc.; et l'altre r[espoundit] a ceo.

Nota ou les services Johan de Bouns et Margerie sa femme furent conuz par R. le fitz H. de Cheynde etc. a Mestre R. de C., ou J. et M.

[1] Eliz. *B*; Elye *Q*. [2] Bardolf *D, L, M, P, S*. [3] *Ins.* etc. *D, M*; rien ne clama en la tenaunce *B*. [4] record, ou vous fuistes trove tenaunt et pur tenaunt accepte par mesme celui qi vyleyn etc. *B*; accepta par taunt le fraunk tenement en sa persone *S*. [5] si par le vyleynage *B*. [6] qe accept' *A*. [7] villeinage feate a cely de qi adounque fust accepte par fraunk en curt etc. *L*. [8] vousist *A*; vensist *D, L, M*; vensit *P, S, Y*. [9] resceu pur le accept[er] en court *L*. [10] Nent plus vous ne vous devolutz *B*; Nyent plus Johan de la sue part ne ceo [se] pust de la tenaunce desavoluper *L*; *sim. S*. [11] par jugement etc. *B*. [12] Gedling, Stoke Bardolph, Colwick, and Carlton lie close together a little to the east of Nottingham. [13] *Vulg.* p. 51. Text from *A*: compared with *B, L, M, P, Q, S, X*.

Hedon. Not thereby can you abate our writ, for before now one Ellen brought an assize of novel disseisin for the same tenements against Thomas Bardolf and John Bagge, where Thomas came and said that he claimed nothing and John answered as tenant. And since in a court that bears record John answered as tenant, and was accepted as tenant by Thomas (whose villein he now makes himself to be),[1] we pray judgment whether he can now abate our writ by a confession that he is a villein, and more especially the villein of him who accepted him as free. Moreover, if Thomas came into court and wished to make himself privy to the tenancy, as by saying that John was his villein, he would not be received to this[2]; and no more can John disenvolve himself from the tenancy.

However, the writ was abated by the award of the justices.

Note from the Record (*continued*).

day of the taking and that he summoned him. And now Cave comes by his attorney and Bagge comes, and Cave straitly betakes himself (*precise se capit*) to the said default that Bagge made on the quindene of Trinity.

And Bagge says that nothing can accrue to Cave in this behalf by any default of his (Bagge's), for he says that he (Bagge) is the villein of one Thomas Bardulf and holds the said tenements of the said Thomas in villeinage; and thereof he prays judgment.

And Cave cannot deny this. Therefore it is awarded that Bagge go thence without day, and that Cave take nothing by his writ, but be in mercy for his false claim.

The record takes no notice of the attempted reply to the tenant's plea of villeinage.

10A. CONINGTON *v.* LYOUNS.[3]

Services are being conveyed by fine. The tenant, being summoned by the *per quae servicia*, produces a release of the services by the conusor's ancestor. *Qu.* whether he need answer to an averment of posterior seisin by the conusor.

Henry, son of Henry of Childerley, made a conusance to Master Richard of Conington of the services of John Lyons and Margery his

[1] Or, 'and so accepted the freehold in his person.'
[2] Perhaps add, 'because of the acceptance in court.'
[3] Proper names from the record.

disoint qe H. le piere R.[1] qe conust avoyt relessé et quiteclamé a J. et a M. sa femme tot le dreit qu'il avoit ou avoir porreyt en lour services 'ut in redditibus, homagiis, releviis et eschetis et omnibus aliis quibuscumque etc.'; et demaunderent jugement[2] del hure qu'il fust heir celuy etc., s'il pout nul services conustre, saunt ceo qu'il ne pout title plus tardif etc.

Denom.[3] Sire, nous dioms qe H. nostre piere fust seisi puis la confeccioun etc.[4] et morust seisi, et nous après sa mort seisi com fitz et heir de homage et xxij. d. par an. Prest etc.

Graunt.[5] Si H. vostre piere etc. eust avowé sur Johan et M. etc.[6] pur services arere, il le eussent[7] osté de s'avowrie, et par soun fait, qe ci est. Par qei il semble qe, tot fusset puys seisi en la maniere avaundite, qe cele seisine ne vous doune[8] title, issint qe vous pusset conissaunce etc.[9]

Pass. Le ostretz vous de l'avowrie fait de sa seisine demene par le fait soun auncestre (*quasi diceret non*) ?

Denom.[10] Si H. le fitz portast le mortdauncestre etc., ceo fait ne targereit s'accioun etc.[11]

Willibi. Nent seisi,[12] prest etc.[13]

Et alii e contra. Mès il semble a ascunes[14] qe cest averement est receu plus par suffraunce de partie qe par reddour de ley.[15]

10B. CONINGTON *v.* LYOUNS.[16]

Per que servicia, ou le tenant dit qe le pere le conissour avoit relessé et quitclamé tot son droit; et l'attorné le conissour tend d'averrer q'il tient de li etc.; et fut r[espond]u.

Une femme[17] conust les services son tenant a un H. en court. H. suyt le *per que servicia etc.*

[1] Henri le fitz Henri de Chedone [Cheyndone' *D*, Chind' *M*, Caldon' *S*] conust les services Johan de Lyouns [*sim. B, D, M, P, Q, S*] et Margarete sa femme a Mestre Ric. de Conyngton' [Copton' *B*, Counton' *M*, Campoton' *Q*, Conynton' *S*] qe suyst le per que servicia vers Johan et Margarete qe disoient qe Henri le pere Henri etc. *L*. [2] *Ins.* si *A, D*. [3] W. Denom *M, P*; Will. Denom *S*. [4] *Om.* etc. *A*; *ins.* de ceste fete *L* [5] Grauntebrigg' *L*; Caunt. *or* Cant. *Al. Cod.* [6] *Ins.* et *A*. [7] il eust este *B, Q*. [8] dorreit *L*. [9] doune pas title de conustre *B*. [10] *Ins.* et *A*; Hengh. *M*; Byngham *P*. [11] ne targereit lassise *B*. [12] issi *A*. [13] *Ins.* puis la confectioun prest etc. *B*. [14] chescon *M*; *om.* a ascunes *P*. [15] Et alii econtra. Et ceo fut par volunte de partie plus qe de reddour etc. *B*; Et les autres le revers mest cest averement par suffrance de partie et ne mye par reddour de ley *L*; *sim. S, but* mes cest averement fut suffert par suffranz. *Om. concluding note Q*. [16] *Vulg.* p. 57. Text from *M*: compared with *A, B, D, P, Q, S, T*, and a note in *X*. Headnote from *S*. [17] Alice *B*.

wife. John and Margery[1] said that the father of the conusor released and quitclaimed to them all the right that he had or could have in their services 'as in rents, homages, reliefs and escheats, and all other things whatsoever etc.'; and they prayed judgment whether, since [the conusor] was the heir of [the relessor], he could make any conusance of the services without showing any posterior title.

W. Denom. We say that our father was seised after the making [of the release] and died seised, and that after his death we, as son and heir, were seised of the homage and of an annual [rent of] twenty-two pence. Ready etc.

Cambridge. If your father had avowed upon John and Margery for services arrear, they would have ousted him from his avowry by his deed, which we produce. Therefore it seems that even if afterwards he were seised in manner aforesaid, that seisin would not give you title so that you could make a conusance [of the services].

Passeley. Would you oust him from his avowry on his own seisin by means of a deed of his ancestor? Not so.

Denom.[2] If [the conusor] brought the mortdancestor, this deed would not delay his action.

Willoughby. Not seised. Ready etc.

Issue joined. But it seems to some[3] that this averment [of the conusor's seisin] was received rather by sufferance of the party than by strictness of law.

10B. CONINGTON *v.* LYOUNS.[4]

A tenant called in by the *per quae servicia* produces a release of the services by the conusor's ancestor, but is driven to an averment that he did not hold of the conusor on the day of the conusance made.

A woman made in court a conusance of a tenant's services to H. The conusee sued the *per quae servicia.*

[1] They were summoned by the *per quae servicia* at the conusee's instance.

[2] Or Ingham.

[3] In some of the manuscripts this note takes a more positive form.

[4] Although this report as well as that which we have just printed occurs in most of our books and they are not contiguous therein, we venture to suggest that both may refer to the same case, the point of law being much the same. See the following note from the record. It will be observed, however, that according to the one report the issue was on seisin, while according to the other it was on the tenure.

Wilbi.[1] pur le tenant dit qe le pere mesme cele qe conust avoit relessé et quitclamé al tenant[2] tut le dreit q'il avoit en les services. Jugement, si devereit attourner par la conisance celui qe nul dreit etc.[3]

Launf. Coment q'il parle de quiteclamance, nous voloms averrer q'il fut son tenant[4] le jour de la conisance etc.

Wilb.[5] Qi estes vous qe dites ceo?

Launf. Vous avez l'attourné celui cy qe fit la conisance et attourné celui qe rec[eut].[6]

Wilb. Il ne put estre partie a tiel averrement si le conisour ne fut mesme en present.[7]

Ber. Il vous tende de averrer qe vous tenistes del conisour,[8] le quel averrement le[9] fet de plus haut ne barre mye.[10] Pur ceo conissez qe[11] vous tenistes de lui ou noun etc.

Launf. Nous voloms averrer q'il tynt de lui qe fit la conisance[12] jour de la conisance fet. Prest etc.

Et alii econtra.

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 369, Camb.

The sheriff was commanded to cause John de Lyouns and Margery his wife to come here to confess by what services they hold their tenements in Great Childerle, Little Childerle, and . . . leworth[13] of Henry, son of Henry of Childerle, which services Henry has here granted to Master Richard of Conington by a fine levied between them.

And now come Master Richard by Geoffrey of Cambridge, his attorney, and John and Margery in their proper persons. And John and Margery, being asked by what services they hold their tenements of Henry, say that they do not hold any tenements in the said vills of him; for they say that, the tenements which they now hold being in the seisin of John, son of John

11. ANON.[14]

Nota de noun suyte en bref de neyfté.

Nota qe la ou homme est nounsuwy après apparaunce[15] en bref de neyveté, il est forclos d'actioun; et si le demaundaunt soyt abbé ou

[1] William *P, and so below.* [2] *Ins.* des tenemenz *B.* *Ins.* mes *M*; mesme *S, P, T.* [3] si actioun etc. *A*; si accioner deive *D.* [4] qil tyent de nostre conissour *B.* [5] *Om.* question and answer, *A, D.* [6] resceut (*in full*) *S, T.* [7] en propre persone *B*; en presence *A.* [8] *Ins.* a jour de la conissaunce *A, D, Q.* [9] averrement nest pas tollet par *B.* [10] haut etc. *B.* [11] si *B, P, S, T.* [12] de nostre conisour *A, D, Q.* [13] The margin of the roll is damaged. Lolsworth, Boxworth, and Elsworth are close to Childerley. [14] Not found in *B, Q.* Text from *A*: compared with *D, L, M, P, S.* Heading from *L.* [15] *Om.* apres apparaunce *L, M, P, S.*

Willoughby, for the tenant, said that the conusor's father had released and quitclaimed to the tenant all his right in the services. And he prayed judgment whether he ought to attorn upon the conusance of one who had no right.

Laufer. Say what he may of a quitclaim, we will aver that he was the conusor's tenant on the day of the conusance.

Willoughby. Who are you that say that?

Laufer. Here you have the attorney of the conusor and the attorney of the conusee.

Willoughby. We cannot be a party to such an averment unless the conusor be present in person.

Bereford, C.J. He tenders you an averment that you held of the conusor: an averment that is not barred by the deed of earlier date. So confess whether you held of [the conusor] or not.

Laufer. We will aver that he held of the conusor on the day of the conusance. Ready etc.

Issue joined.

Note from the Record (*continued*).

Porthors,[1] and Margery his wife, Henry of Childerle, father of the said Henry, granted, released, and quitclaimed to the said John and Margery, their heirs and assigns, all the right and claim that he had or could have in all the lands and tenements which the said John son of John and Margery held of him in the said vills, together with the homages, rents, wardships, reliefs, heriots and escheats, and all other services which might come to him or his heirs from the said tenements; and they produce the said writing which witnesses this; and they demand judgment whether they ought to attorn for any service arising from the said tenements, by virtue of the conusance of the said Henry.

This entry shows no further proceedings. If our two reports relate to one case, they suggest that it was more than once discussed.

11. ANON.[2]

Nonsuit in an action of naifty.

When a man is nonsuited after appearance in a writ of naifty, he is debarred from action. And if the demandant be an abbot or prior,

[1] Apparently the same person as John de Lyouns, but this is not perfectly clear.

[2] This case is Fitz., *Jugement*, 219.

priour ou de semblable condicione qe ne poet charger sy noun en soun temps, il est barré tout son temps,[1] mès cel nounsiwte ne serra prejudiciel a ses successours s'il eint dreit etc.

{En [2] bref de nefté nounsute après apparaunce bar homme seculer et ses heirs por toz jours et home de religioun por son tens.}

12. COMBE (ABBOT OF) *v.* GARSALE.[3]

Replevine, ou il suffit mye a dire qe jeo ay tendu si jeo ne soy prest dounke a tendre : ou il traversa la seisine de la rente, scil. du parcel, et l'avowaunt avoyt eyde de sa parcenere.

Replevine, ou l'avoweré fuist faite pur rente et feuté de deux parceners ; ou il conust en le noun l'un par baillif ; ou le tenaunt fuist pres d'avoir fest les services al un parcener etc.

Un Abbé se pleynt qe A. a tort [4] prist ses averes etc.

Malm. avowe par li et conust [5] pur soun parcener com soun baillif, et pur la resoun qe l'Abbé tient de eaux un mies etc. par fealté et par les services de xxij. s.[6] par an, de quele fealté un C. lour auncestre fust seisi par my la mayn etc. predecessour cesti Abbé, et de la rente si furent il mesme seisi par mi la mayn le Abbé qi se pleint etc.,[7] et pur ceo qe ij. s. furent arere de l'an prochayn avaunt le jour de la prise, si avowe il pur luy et pur B. soun parcener com soun baillif etc. en dreit de la vache etc. Et pur ceo qe la fealté l'Abbé fust arere, si avowe etc. en dreit de la genice.

Friss. Il avowent pur ij. s. arere etc. purceo qe l'Abbé tient etc. par fealté etc., de quel lour auncestre etc., et des queux xxij. s. eux mesmes furent seisi. Qaunt a la rente nous dioms qe unqes seisi de xxij. s., prest etc. Et qaunt a la fealté nous dioms qe l'avoms sovent tendu a lui et a soun parcener come en comune entre eaux, mès,[8] purceo qe A. la voleyt avoir [9] soul r[eceu] [10] et nous la vodrioms faire [11] en comune qaunt ele est due en comune [12] ; et issint qe ceo n'est mye en nostre defaute qu'il ne sount seisi en la manere avauntdite,[13] prest etc.

Malm. La seisine [14] est une en luy mesme, et si vous li [15] usset fait a l'un, vous serriet excusé vers l'autre en mesme la maniere come

[1] *Om.* il . . . temps *A* ; *supplied from D, L, M, P, S.* [2] This version from *X.* [3] *Vulg.* p. 52. Text from *A* : compared with *B* (shortened version), *D, L, M, P, Q, R, S, Y,* and a note in *X.* Headnotes from *A* and *B.* [4] qa tort *A.* [5] *Om.* conust *A, D.* [6] Various sums, *Al. Cod.* [7] *Om.* et . . . etc. *B.* [8] *Om.* mes *A.* [9] *Ins.* com a lui *M, Y.* [10] *Om.* receu *L, P, S.* [11] soul nous le vodroms pas fere qar ele deit estre *M, Y.* [12] *Om.* qaunt . . . comune *M, Y.* [13] *Om.* avauntdite *A, D* ; seisi en comune *L, S.* [14] seigneurie *B, L, M, P, R, S, Y* ; lass' *Q.* [15] la *Al. Cod.*

or of similar condition, who cannot charge [his house] beyond his own time, he is barred for his whole time; but the nonsuit will not be prejudicial to his successors if they have right.

{In a writ of naifty nonsuit after appearance bars a secular man and his heirs for ever, and it bars a man of religion for his time.}

12. COMBE (ABBOT OF) *v.* GARSALE.[1]

A plea of tender is insufficient, unless the party making it continues the tender in court. Fealty must be tendered in person, but *semble* a bailiff may receive it. *Qu.* whether to an avowry for a rent of twenty-three shillings the plaintiff, admitting a rent of twenty shillings, can traverse the alleged seisin of the rent of twenty-three. Aid of his parcener is granted to a defendant in replevin.[2]

An Abbot complained that A. wrongfully took his beasts etc.

Malberthorpe made avowry for A., and cognisance as bailiff for [B.] his parcener: and for the reason that the Abbot holds of them a messuage etc. by fealty and by the service of twenty-three shillings a year, of which fealty one C., their ancestor, was seised by the hand of a certain predecessor of the Abbot, and of which rent themselves were seised by the hand of the plaintiff; and because three shillings were arrear for the year next before the day of the taking, he, A., avows for himself, and as bailiff for B. his parcener, the taking of the cow etc. And because the fealty of the Abbot was arrear he avows etc. the taking of the heifer.

Friskeney. They avow for three shillings arrear because the Abbot holds etc. by fealty etc. of which their ancestor [was seised] and by a rent of twenty-three shillings of which themselves were seised. As to the rent, we say that they were never seised of the twenty-three shillings: ready etc. And as to the fealty, we say that we have often tendered it to him and his parcener in common between them, but A. wished to receive it alone, and we wished to do it to them in common, since it is due to them in common; and so it is not our fault that they are not seised of it in manner aforesaid.[3] Ready etc.

Malberthorpe. The seigniory[4] is in itself one, and if you had done the fealty to one [of the parceners], you would have been excused as

[1] Proper names from the record.

[2] This case is Fitz., *Avowre*, 187; but only the part of it that relates to the fealty is there noticed.

[3] Or 'seised of it in common.'

[4] Or 'the seisin.'

vous serretz de siwte.[1] Et d'aultrepart, celuy qe voet dire qe ceo n'est mye sa defaute de ceo qe le seignour [2] n'est pas seisi de ceo pur quel il ad avowé, il covent qu'il seit tot temps prest a ceo fair. Mes ore l'Abbé n'est mye en court. Jugement.

Toud. Tot fust il en court, a qi freit il fealté?

Et fut issint qe le pleintif et le defendaunt furent l'un et l'autre par attorné.[3]

Malm. Baillif poet receyvre fealté en noun soun seignour, mès autre serroit si nous avowasoms par homage qe ne put estre receu par baillif[4]; et, desicome nostre avowrie n'est pur altre choce si noun de ceo qe baillif ad poer a receyvre, et l'Abbé n'est mye en court,[5] jugement s'il pusse dire qe ceo n'est mye sa defaute. Et qaunt a l'averement qu'il tend qe unqes seisi de la rente, a ceo n'avendra il mye eynz ceo qu'il eit graunté la tenance, qe par la si devoms comencer adeprimes.[6]

Toud. Nous grauntoms a tenir de vous par les services de xx. s. par an, et qaunt a les ij. s. outre, unqes seisi, prest etc.

Malm. Si jeo deisse qe vous tenisset de moi par[7] fealté et jeo deisse qe jeo fusse mesme seisi, la serrez bien r[eceu] a dire qe[8] unqes seisi[9]; et la cause est purceo qe chescun est un gros.[10] Mès nous avoms avowé pur rente q'est un[11] en luy-mesmes. Jugement, si a traverser parcele[12] devoit avenir. Et d'aultrepart, si vous tenet de moi par xx. s. et jeo seisi de ij. s.[13] jeo avowrei pur le remenaunt.

Hervi. Vous ne poet estre partie a ceo sauntz vostre parcenere.[14] Par qei priet[15] eyde de luy.

Et habuit.[16]

{*Malm.*[17] Vous n'avendrez pas a traverser seisine de parcel, qar seisine de parcel de rent est aconté por seisine de tut la rente. Responet qaunt a la felté.

Fr. Nous avoms sovent tendu la felté a vous deuz en comune et uncor sumes prest; mès por ceo qe vous la vodriez soul avoir nous ne la vodrioms pas fer.

[1] *Ins.* fet a un parcener *M, P, R, S, Y.*; fete par un parcener *L.* [2] lavowaunt *L, M.* [3] fealte qe lun et lautre furent par attornes *A*; *sim. D, Q, R.* Text from *M*; *sim. L, P, S, Y. Om.* paragraph *B.* [4] *Om.* mes . . . baillif *A, D.* Text from *M*; *sim. P, Y*; mes autre serreit si ceo fut homage *R*; *sim. L, S.* [5] *Om.* et . . . court *A, D.* Text from *M.* [6] *Om.* qe . . . adeprimes *A, D.* Text from *M*; *sim. L, P, R, S, Y.* [7] *Ins.* homage et *B, L, M, P, R, S, Y*; *om. A, D, Q.* [8] a traverser *B, L, M, P, R, S, Y.* [9] *Ins.* de la fealte *B, L, M, P, R, S, Y*; *om. A, D, Q.* [10] *Ins.* par lui mesme *B*; en ly mesme *M.* [11] *Ins.* service *Al. Cod.* [12] *Ins.* de ceo qest un gros *M*; ceo qest parcel du gros *R*; *sim. P, S.* [13] dun dener *B*; de deux deners *L, P, S. Ins.* com parcele de ceo xx. s. *M*; *sim L, P, S, Y.* [14] *Ins.* et non conceditur auxilium *and end case B.* [15] eiez *L*; eit *S.* [16] *Add* et sic remanet *L, M, P, Y*; de ly et sic stetit *R.* [17] Thi version of the end of the case from *X.*

regards the other, as in the case of suit of court. And again, one who urges that it is not his fault if the lord is not seised of that for which he avows is bound to be always ready to do that thing. But here the Abbot is not in court. Judgment.

Toudeby. If the Abbot were in court, to whom should he do fealty ?

(The case was that both parties were present by attorney.)

Malberthorpe. A bailiff may receive fealty in his lord's name. Otherwise would it be if we avowed for homage, for that a bailiff cannot receive. And we pray judgment whether the Abbot can say that he is not in default since he is not in court, and our avowry is for nothing but what a bailiff has power to receive. And as to the averment that he tenders about never being seised of the rent, to that he cannot get until he has admitted the tenancy ; for that is the point where we must begin.

Toudeby. We admit holding of you by the service of twenty shillings a year, and, as to the additional three shillings, we say 'never seised' ; ready etc.

Malberthorpe. If I said that you held of me by homage and fealty and I said that I myself was seised, then you would be received to say 'never seised of the fealty,' and the reason is because homage and fealty, each of them is a thing in itself. But we have avowed for a rent which is a single thing, and pray judgment whether you can be allowed to traverse a parcel of it. Besides, if you hold of me by twenty shillings and I am seised of two shillings,[1] I can avow for the residue.

Stanton, J. You cannot be a party to this averment without your parcener. So pray aid of him.

Aid granted.[2]

{*Malberthorpe.*[3] You cannot get to a traverse of a parcel, for seisin of a parcel of the rent is accounted seisin of the whole. But answer as to the fealty.

Friskeney. We have often tendered the fealty to you two in common and still are ready ; but as you would have it done to yourself alone, we would not do it.

[1] Or 'of one penny.'

[2] One MS. says that aid was not granted. But this is a mistake.

[3] From a compressed version of the debate.

Malm. Felté fet al un vous deschargereit vers amdeus, com de sute. Estre ceo, vous ne poez dire qe vous estes prest ore, qar vous estes par attorné, et nous sumes baillif por nostre parcener et pooms resceivre por amdeus.}

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 431, War.

A replevin action by the Abbot of Cumbe against Thomas de Garsale. A cow and a heifer were taken on [21 May, 1308] Tuesday next before Ascension Day, 1 Edw. II., at Blakyndone [1] in the place called the Incroft. Damages are laid at a hundred shillings.

The defendant, by John Herberd his attorney, avows in his own name and makes cognisance in the name of Robert de Verdon, his parcener. The plaintiff holds of them a mill and six acres of meadow in the vill of Blakyndone by fealty and the service of twenty-three shillings a year; of which services Henry Loured,[2] grandfather of the defendant and Robert, whose heirs they are, was seised by the hand of William, Abbot of Cumbe, predecessor of the plaintiff, and likewise the defendant and Robert were seised of twenty shillings a year; and because three shillings of the service of twenty-three were arrear for a year before the day of the taking, the

13. PERVES *v.* FOXLEY.[3]

Besael, ou il alegge excepcioun de drein seisi, et le demaundaunt dit q'il fust frere pusné, et le tenaunt dit q'il entra com eygné.

La seisine le frere pusné n'abatera pas le mordauncestre porté par le frere eigné. Idem est de seisina bastardi.[4]

Un homme porta soun bref de besael etc.

Westcot. Après la mort A. soun besael,[5] de qi seisine il demaunde, si entra un Richard com fitz et heir, out et tient tote sa vie et morust seisi. Et c'est un bref de possessioun, qe voet estre porté de la mort le drein seisi. Jugement du bref.

Denom.[6] Auxint haut com nous avoms lyé nostre descente, auxi haut deverount il lier lour excepcioun. Mès nous avoms lié nostre descente de nostre besael, descendaunt a nous com a plus prochayn heir. Par qei il vous covent dire qe Richard entra com fitz et plus prochayn heir et [7] come fitz eygné einz ceo qe lour excepcioun soit

[1] Apparently Blackedon, near Lillington. See Dugdale, Warwickshire, 213. [2] Or Lonred. [3] *Vulg.* p. 52. Text from *A*: compared with *B*, *D*, *L*, *M*, *P*, *Q*, *R*, *S*, *Y* (f. 51d), and a short version in *X*. [4] This is a marginal note in *P*. [5] ael *D*. [6] Joh. Dengham *S*; J. Denham *Y*. [7] ou *B*, *L*, *M*, *P*, *S*, *Y*; et *D*.

Malberthorpe. Fealty done to one would discharge you as against both, as in the case of suit [of court]. Besides, you cannot say that you are now ready, for you are here [only] by attorney, and we are bailiff for our parcener and can receive [fealty] for both.}

Note from the Record (*continued*).

defendant took the cow, and because the fealty of the Abbot was arrear he took the heifer, in the place aforesaid, which is parcel of the said tenements.

The plaintiff says that the defendant cannot avow the taking lawful either for the three shillings or for the fealty; for he says that he holds the tenements of the defendant and Robert by fealty and the service of twenty shillings only for all services; and that Henry the grandfather never was seised of any service for the tenements by the hand of Abbot William, except the said twenty shillings; and that he, the plaintiff, before the day of the taking was ready to do his fealty to the defendant and Robert for the tenements if they would have received it jointly; and this he is ready to aver; and thereof he demands judgment.

And because the defendant cannot abide (*expectare*) an averment of this kind without Robert his parcener, let him [Robert] be summoned for a month after Easter to answer along with [the defendant].

13. PERVES *v.* FOXLEY.[1]

In an action of besael the tenant pleads 'last seisin' in the person of one T, who entered as son and heir of the besael. *Semble* this is not a good plea in abatement of the writ, unless the tenant alleges that T entered as eldest son or as next heir. The law as to pleas of 'last seisin' and 'claim by the same descent' discussed.[2]

A man brought a writ of besael etc.

Westcote. After the death of his great-grandfather, on whose seisin he demands, there entered one [Thomas] as son and heir, and he had and held all his life and died seised. And this is a possessory writ which should be brought on the seisin of the person who was last seised. Judgment of the writ.

J. Denom. They ought to lay their plea as high up as we lay our descent. But we have laid our descent from our great-grandfather, descending to us as to the next heir. Therefore it behoves you to say that [Thomas] entered as son and next heir or as eldest son, if you would make your plea complete. For it may be that he entered as

[1] Proper names from the record.

[2] See our Vol. I. pp. 130, 131.

pleine; qar il poet estre q'il entra come fitz pusné ou [1] a luy [2] nul dreit ne descendit,[3] par taunt come il ad eigné, en quel cas la [4] felonye ne la [5] quiteclame ne nous barr[eit].[6] Jugement.

Herle. Conisset primes qe Richard entra com fitz et heir et pus dites qe ceo ne vous deit nuer.[7]

Denom.[8] Sa seisine ne nous deit nuer q'il entra com nostre tollour.[9] Jugement, si sa seisine deive nostre bref abatre qar il fust fitz pusnee.

Herle. Et nous jugement depus qu'il unt conu q'il entra com fitz et heir et qu'il morust seisi. Et le quel q'il soit eigné ou noun [10] ceo n'est mye a trier a [11] cesti bref de possessioun, qe serroit en [12] le dreit. Jugement.

Pass. ad idem. Si le tenaunt mette avaunt excepcioun qe cherreit a trier le dreit, ceo serroit aschune choce,[13] mès la ou le demaundaunt mette avaunt [14] choce en le dreit la ou soun purchatz n'est si noun a trier la possessioun,[15] n'entendomps mye qe nous n'eioms mester a r[espoundre] a ceo [16] qe n'est pursuaunt a la nature de soun bref. Et demaundoms jugement *ut supra*.[17]

Denom.[18] Si nous voloms demorrer en jugement il covent qe nous seioms a un. Par qei il covent dire q'il fust fitz pusnee, et pus receyvoms [19] ceo qe la court dorra.[20]

Herle.[21] Auxi bien come la excepcioun de clamer [22] deit estre meyntenu en sa nature, auxint bien deit la excepcioun de dereyn seisine.[23] Mès si Richard fust en vie il abatereit vostre bref par clamer par mesme la descente sauntz [24] trier le quel il fust eigné ou pusnee. Et de l'houre qe vous avet sa seisine conu, demaundoms jugement de cesti bref.

Clav.[25] La excepcioun de clamer par mesme la descente et la excepcioun de derrein seisine sount de divers natures, qar le clamer etc.[26] si oste le demaundaunt de bref de possessioun et luy chacera [27]

[1] et *M, P.* [2] pusnee a qy *L.* [3] doit descendre *M*; put descendre *R.* [4] sa *D, M, Y.* [5] sa *D, M, Y.* [6] ne vous deit nure *P.* [7] ceo qe vous voillez *M*; *sim. B, L, P, R, Y.* [8] J. de Denom *S.* [9] Denom conust bien qe Rich. entra et qil morust seisi, mes il dit qil entra com son tollour qar il fut fitz pusne *M*; *sim. L, P, R, S, Y.* Denom conust bien qil entra come fuiz et heir, mes ceo ne ly doit nure, qar il entra com son tollour, qar il fuist frere puysnee *B.* [10] pusne *B, L, M.* [11] par *B, M*; en *D.* [12] qe ceo serroit a trier *M, Y.* [13] droit autre serroit *B.* [14] demandant replie *R.* [15] *Ins.* et issint desacordaunt a soun purchas *B.* [16] son r[espons] *M, Y.* [17] desicom il ad conu lentre ut supra si ceste bref ne deive abatre *M, Y*; desicum il ad conu nostre excepcion qest en la possession, jugement si nous a sa replicacion qest en le dreit desacordaunt a son purchas devoms r[espondre] *R*; *sim. L, S.* [18] J. Denom. *S.* [19] receivroms *or* receiveroms *Al. Cod.* [20] nous dorra *B, S*; nous durra *L, M*; nous dirra *P*; agardera *R.* [21] Malm. *B, D, L, M, P, Q, R, S, Y.* [22] *Ins.* par mesme la descente *B.* [23] *Ins.* estre meyntenu *B.* [24] *Ins.* ja *Q, Y.* [25] Claver *R.* [26] qar la exceptioun de clamer *B.* [27] chace *L, M, R*; met *B.*

younger son and that no right descended to him since there was an elder son; and in that case his felony or his quitclaim would not bar us. Judgment.

Herle. First admit that [Thomas] entered as son and heir and then say why this ought not to hurt you.[1]

J. Denom admitted that [Thomas] entered and that he died seised, but (said he) he entered as our 'tollour,' for he was a younger son.[2] Judgment, whether his seisin should abate our writ.

Herle. We also crave judgment since they have admitted that he entered as son and heir and that he died seised. And whether he was eldest or no is not to be tried in this possessory writ, for that would be to try a matter of right.

Passeley on the same side. If the tenant put forward a plea which contained matter of right, that indeed would be something.[3] But when the demandant puts forward a matter of right, and the writ that he himself has purchased goes only to try the possession, we do not believe that we need answer to matter which does not pursue the nature of the writ. We demand judgment as above.[4]

J. Denom. If we are to abide judgment, it behoves that we be at one. Therefore you ought to say that [Thomas] was younger son; and then let us receive what the Court will give us.

Malberthorpe.[5] Just as a plea of 'claim by the same descent' should be maintained in its own nature, so also the plea of 'last seised.' But if [Thomas] were alive, he could abate your writ by 'claim by the same descent' without trial whether he was eldest son or younger. And since you have admitted his seisin, we demand judgment of this writ.[6]

Claver. The plea of 'claim by the same descent' and the plea of 'last seised' are of different natures; for the 'claim' ousts the demandant from his possessory writ and drives him to his writ of right;

[1] Or 'and then say what you please.'

[2] Or 'younger brother.' In one MS. Denom appears to admit that Thomas entered as son and heir. One may enter as heir without being heir.

[3] Or 'would be another case.'

[4] Or 'whereas he has admitted our plea, which lies in the possession. Judgment whether we need answer to his replication which lies in the right.'

[5] Or Herle.

[6] In reading the preceding argument attention should be paid to the word *next*. Apparently the tenant's counsel scrupled to say that Thomas entered as son and *next* heir.

a soun bref de dreit; mès la excepcioun de derrein seisine si oste homme de cesti bref[1] et luy chacera[2] a bref de mesme la nature com a demaunder de la seisine celuy de qi mort[3] il prent sa excepcioun. Dount a[4] ceo qe nous ne poumes avoir actioun[5] de sa seisine, cesti bref ne deit abatre; et la dioms nous qu'il fust nostre tolour.[6]

Scrop. Si le demaundaunt porte soun bref de la seisine celuy de qi vous pernet vostre excepcioun,[7] il poet estre q'il ad issue, et issint ne prendroit il rein par soun[8] bref; ou s'il eust fait[9] felonie, unqore[10] serroit il forclos qaunt a demaunder[11] de sa seisine. Par qei cesti bref n'abateray[12] mye saunt ceo qe vous ly donetz bon bref de sa seisine, et nomement la ou vous estes estraunge.

Herle. La ou vous dites qe Richard entra come fitz pusnee, il entra com eignee. Prest etc.[13]

Et[14] jeo crey s'il eussent graunté q'il fut pusné le bref ne se abatera mye. Set attamen ignoro si Richard deviast sanz heir de sey si le bref se abatereit, qar il semble unqore qe l'action del eisné fitz serra plus cler a demaunder de la seisine son pere[15] qe de la seisine son frere pusné, a qi nulle rien ne pout descendre de dreit vivaunt son frere eisné.

{*Scrop.*[16] Cest excepcion li ost de bref et d'accion de la seisine son besael, et il ne deit estre chacé a user bref de la seisine son tollor; et put estre q'il ad issu; donqes serreit il barré de chescun action par taunt; non sic de clamer, qar la est l'action sauvé de la seisine de mesme l'auncestre par altre bref. Estre ceo, vous q'estes estrange ne serrez pas de tel condicion d'abatre le bref com privé.

Herle. Il fut eisné. Prest etc.

Et alii econtra.

Et s'il fut pusné et mort saunz issu t[ame]n le bref estet.[17]}

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 379d, Camb.

William de Perves[18] de Dunston on a former day (*alias*) demanded against John de Foxle and Constance his wife a carucate of land and twenty shillings' worth of rent in Gildene Mordone, whereof Wakelin[19] de Perves,

[1] de son bref de possessioun *M, P, R, Y.* [2] chace *B, D, M, R, Y.* [3] seisine *L, R, S.* *Om.* mort *Y.* [4] Sanz *L, M, P, R, Y.* [5] Dount si vous ne porretz doner bon brief *B.* [6] *Ins.* et issint ne poms avoir brief de sa seisine *B.* [7] seisine Richard *B.* [8] nul *M, R.* [9] ou par cas il fit *B.* [10] et issint *B.* [11] *Om.* a demaunder *A.* [12] abatera *Al. Cod.* [13] Et ideo ad patriam *M, Y.* [14] This note from *M*; also in *B, L* (with omission), *P, S, Y*; not in *A, D, Q, R.* [15] frere *B.* [16] This ending of the case from *X.* [17] *For* estereit (?) [18] *Or* Pernes. [19] *On some occasions* Walkelinus.

but the plea of 'last seised' only ousts a man from the writ that he is using and drives him to another writ of the same kind—namely, one based upon the seisin of the person who is alleged in the plea to have been last seised. So, unless we could have an action on his [Thomas's] seisin, this writ ought not to abate; and [Thomas] was our 'tollour.'

Scrope, J. If the demandant were to bring a writ upon the seisin of the person whom you mention in your plea [*i.e.* of Thomas], it might be [found] that he [Thomas] had issue, and then the demandant would take nothing by his writ. And again, if [Thomas] had committed felony, then the demandant would be debarred from demanding on his [Thomas's] seisin. Therefore this writ shall not be abated unless you give him a good writ on the seisin [of the person whom you allege to have been last seised], especially since you are a stranger.

Herle. Whereas you say that [Thomas] entered as younger son, he entered as elder. Ready etc.

And[1] I believe that if [the tenant] had admitted that [Thomas] was a younger son, the writ would not have abated. Still I do not know[2] whether, if [Thomas] had died without an heir of his body, the writ would have abated, for it seems that the eldest son's action on the seisin of his father would be clearer than his action on the seisin of a younger brother, to whom nothing could descend in the lifetime of his elder brother.

{Scrope, J.[3] This plea would oust him from both writ and action on the seisin of his great-grandfather. And he ought not to be driven to use a writ on the seisin of his tollour; and it may be that [Thomas] has issue, and in that case [the demandant] would thus be barred from every action. Not so in a case of 'claim,' for there [if the writ were abated] his action on the seisin of the same ancestor by another writ would be saved to him. Moreover, you, who are a stranger, shall not be in the same position as a privy to abate the writ.

Herle. He was eldest. Ready.

Issue joined.

If [the person named in the plea] were younger son and died without issue, still the writ would have stood.}

Note from the Record (*continued*).

the demandant's great-grandfather, was seised in his demesne as of fee on the day on which he died. The descent of the fee is traced from Wakelin to William as son and heir, from him to William as son and heir, from

[1] This note is not found in all of our books.

[2] 'And I do not even know' would perhaps be a more acceptable reading.

[3] From a short version in MS. *X*.

Note from the Record *(continued)*.

him to Roger as son and heir, from him to the demandant as brother and heir.

And now comes John. And Constance does not come, but on a former day she said that she had nothing in the tenements save as John's wife. And John, as sole tenant, then vouched Richard, son of Geoffrey de Pycheford, who was to be summoned in the county of Salop. And he (Richard) now comes and warrants. And he says that he ought not to answer the demandant to this writ, for after Wakelin's death one Thomas, son of the said Wakelin, entered the tenements as his son and heir, and held the same all his life and thereof died seised; and whereas this writ is a possessory writ (*quoddam breve possessorium*), whose nature is to be brought (*quod*

14. LACEY *v.* BLABY.[1]

Dower *de assensu* ou le tenaunt dit qe l'heir entra après la mort etc. et l'assigna iiij. vergés en qey ele soy agrea, ou dit fut qe s'il prist ceste excepcioun au bref il n'abatera pas, qar il ad relacioun al demande precedent.

Dos de assensu patris ou la femme fuist douwé par condicioun : ou le bref fuist chalengié pur ceo q'ele avoit receu partie etc., *et stetit.*

Johan de Laci et Alice sa femme porterent lour bref de dower *de assensu patris* et demaunderent ij. vergez [2] de terre vers N.[3] de Blaby, et disseint [4] qe Richard de Blaby fitz et heir Hughe de B. jadys baroun ceste Alice la dowa al hus de moster de l'assent et la volunté l'avauntdit Hugh, dount ele rien n'ad. Et mistrent [5] avaunt le fait Richard, qe testmoigne qu'il la dowa del assent etc. de v. vergés de terre ove les apurtenaunces etc. auxint pleynement com en la chartre soun piere fait a l'avauntdit A. fut contenu [6]; et mistrent [7] avaunt la chartre H. en la quele il i avoit tiele clause [8]: 'et si contingat me vivente predicto R.[9] decedere,[10] volo et concedo quod predicta Alicia habeat et teneat nomine dotis iiij. virgatas terre in [11] dominico meo et unam virgatam de villenagio meo.' [12]

Herle. Richard jadiz baroun Alice survesquit Hughe soun piere de qi assent ele demaunde, et entra les tenemenz qe furent a H.,[13] le

[1] *Vulg.* p. 53. Text from *A* : compared with *B*, *D*, *L*, *M*, *P*, *Q*, *S*, *Y* (f. 138), and a short version in *X*. Headnotes from *A* and *B*. [2] une verge *L*, *M*, *P*, *S*, *Y*; une car' *B*. [3] Nichol *B*; Nich' *L*, *M*, *P*, *S*. [4] *Om.* et disseint *A*, *D*; *ins. Al. Cod.* [5] mostre *A*; mistrent *Al. Cod.* [6] *Om.* fut contenu *A*; *ins. Al. Cod.* [7] mostre *A*; moustra *D*. [8] cause *A*; clause *Al. Cod.* [9] *Ins.* filio meo *B*; *sim. L*, *M*, *P*, *S*; predictum Ricardum filium meum *Y*. [10] si contingat R. filium meum me vivente discedere *X*. [11] de *B*, *L*, *P*, *S*. [12] *Ins.* en C, *B*, *L*, *S*; etc. *Y*. [13] *Ins.* come fuiz et heir *B*.

Note from the Record (*continued*).

naturaliter vult ferry) on the seisin of the last seised of the blood etc., he prays judgment.

The demandant fully admits that, after the death of Wakelin, the said Thomas entered the tenements etc. and thereof died seised; but he says that Thomas's seisin ought not to impede (*obstare*) him in this behalf, for Thomas did not enter as son and heir of Wakelin, for that (*eo quod*) he was the younger son (*filius postnatus*) of Wakelin; and this he is ready to aver, and therefore he prays judgment.

Richard says that Thomas was Wakelin's first-born son (*filius antenatus*), and prays that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded for a month from Easter.

14. LACEY *v.* BLABY.[1]

A writ of dower *ex assensu patris* containing the clause *unde nichil habet* is not abatable by the plea that parcel of her dower has been received by the demandant, since those words relate to the definite quantity of land specified in this writ. The present case is an instance of a contingent endowment.

John de Lacey and Alice his wife brought their writ of dower *ex assensu patris* and demanded a virgate of land against Nicholas of Blaby; and they said that [Geoffrey] of Blaby, son and heir of Hugh of Blaby and sometime husband of Alice, endowed her at the church door by the assent and will of the said Hugh; and that of this she has nothing. And they produced a deed of [Geoffrey] which witnessed that by the assent etc. he endowed her of five virgates of land with the appurtenances as fully as was contained in the charter of his father made to the said Alice. And they produced a charter of Hugh containing the following clause: 'and if it happen to [my said son Geoffrey][2] to die in [my] lifetime, then I will and grant that the said Alice have and hold by way of dower four virgates of land in my demesne and one in my villeinage.'

Herle. [Geoffrey], Alice's late husband, outlived Hugh his father, upon whose assent it is that she demands, and entered upon the

[1] Proper names from the record.

[2] Both here and below many of the MSS. state the contingency in an ambiguous manner; but there can be little doubt as to their meaning, and the language of the record is clear.

quel Richard morust seisi. Après qi mort entra N. com fitz[1] et heir; le quel assigna a cesti A. iiij. vergez de terre en dower, a qi ele se agrea, et[2] est seisi; et desicome ele est seisi d'une parcel et del assignement cesti N., demaundoms jugement si a cesti bref *unde nichil habet* deive estre r[espondu].

Lauf. Nous demaundoms fors ij. vergez[3] de terre, coment qe les feez[4] parlent[5] de plus,[6] nostre bref ne[7] veot forsqe certeyn,[8] jugement si[9] par tiel excepcioun le puisse abatre.

Herle. Grauntés q'ele est seisi *ut supra.*

Hertep.[10] Le quel pernez vous cest excepcioun, au bref ou l'actioun? Si au bref, par taunt ne devet le bref abatre par receite de partie[11] come[12] en[13] comune bref de dower,[14] qe cele parole *unde nichil habet* ad relacioun al actioun[15] precedent, la quel est[16] certein, qar ceo est un[17] bref de dreit en soun cas. Et si vous le voilletz[18] al actioun[19] nous r[espondroms] assez.

Pass.[20] Par cesti bref n'averez jammès actioun, qar le fait sur qei vostre actioun est foundu veot 'et si contingat me vivente etc.[21] quod predicta Alicia etc.,' issint qe l'actioun Alice fust supposé si H. survesquit[22] Richard soun fitz. Mès ore avoms nous dit qe Richard survesquit H. soun piere, par qi[23] par vertue de tiele especialté avauntdit l'actioun par ceo bref est esteint.[24]

Launf. Qe Hughe survesqit Richard, prest etc.

Herle. Le revers.

Et ideo ad patriam.

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 496, Leic.

John de Lacy and Alice his wife, by Nicholas Tempest their attorney, demand against Nicholas de Blaby a virgate in Blaby whereof Geoffrey de Blaby, son and heir of Hugh de Blaby, sometime husband of Alice, by the assent and will of Hugh his father, endowed her at the church door when he

[1] frere *B, L, M, P, S, Y*; fitz *Q*; fiz *D.* [2] *Ins.* de ceo *B.* [3] une verge *L, P*; une acre *M, Y.* [4] fetz *P*; feez *Q*; qe nos munementz en *L*; *sim. S, Y.* [5] coment qil firent mencioun *M.* [6] *Ins.* et demandoms jugement si *M, L, P, S.* [7] qe *M, L, P, S.* [8] veut certeynte *P.* [9] *Om.* jugement si *L, P, S.* [10] Denom *B, L, M, P, S*; W. Denh. *Y*; Lauf. *D, Q.* [11] parcele *B, M.* [12] *Ins.* vous freiez *M*; *sim. L, P, S.* [13] un *D, L, Q, S.* [14] *Ins.* ou la demaunde nest pas en certein par le brief *B.* [15] habet en cesti bref ad agard [regard, relacion] a la demande [parole] *M*; *sim. B. L. P. S, Y.* [16] *Ins.* en *B. L. M. P. S.* [17] qar cest son *B.* [18] pernetz *B, L, M.* [19] *Ins.* dites ceo et *M*; *sim. L, P, S.* [20] *Ins.* Jeo provera qe *M*; *sim. L, Y.* [21] vivente predicto Ricardo filio meo decedere *B*; *sim. L. S*; predictum Ricardum filium etc. decedere *Y.* [22] survivereit *Y.* [23] et per consequens *B, L, P, S, Y.* [24] End of the case, *A, D, Q.* Residue from *L*; *sim. B, M, P, S, Y.*

tenements that belonged to Hugh. And he died seised, and after his death Nicholas [the tenant] entered as son [1] and heir. And he assigned to this Alice four virgates of land in dower, and to this she agreed and [thereof] she is seised. And since she is seised of parcel, and that too by the assignment of [the tenant], we demand judgment whether she should be answered to this writ which alleges that she has nothing (*nichil habet*).

Laufer. Although our muniments speak of five virgates of land, we only demand one. Our writ demands only what is certain. Judgment, whether he can abate it by an exception of this kind.

Herle. Then admit that she is seised as aforesaid.

Hartlepool.[2] Are you pleading to the writ or to the action? If to the writ, you cannot thus abate it by alleging that there has been a receipt of a part, as you might abate the ordinary writ of dower, for this phrase 'whereof she has nothing' has relation to the preceding words which are definite[3]; and this is [the widow's] writ of right. If, on the other hand, you are pleading to the action, we shall have answer enough to give you.

Passeley. You shall never have action by this writ, for the deed on which your action is founded says 'and if it happen to [the said Geoffrey to die in my] lifetime, then I will that the said Alice etc.'; so that Alice's action must presuppose that Hugh outlived his son [Geoffrey]; but we have told you that [Geoffrey] outlived his father Hugh, so that an action upon this writ is extinguished by virtue of this specialty.

Laufer. Hugh outlived [Geoffrey]. Ready etc.

Herle. The contrary. (And so to the country.)

Note from the Record (*continued*).

married her. The count states that the endowment took place at the church door of Blaby on [9 January, 1271] Friday after the Epiphany in 55 Hen. III.

The tenant, by Adam de Outheby his attorney, prays that the demandants do show to the Court what specialty (*speciale factum*) they have for this assigned dower.

The demandants produce two deeds. In one of them it is contained that Geoffrey, with Hugh's assent, granted to Alice his spouse in dower, in case he should die in her lifetime, five virgates in Blaby, namely those which

[1] Or 'as brother.'
[2] Or Laufer or Denom.
[3] In other words, you should read the writ thus: she demands one virgate as her dower, of which [one virgate] she has nothing. See Reg. Brev. Orig. 170d.

Note from the Record (*continued*).

Hugh had granted to Alice in dower, as was more fully contained in the charter which Hugh had made to Alice. The other writing said that Hugh granted that Geoffrey might marry Alice as his lawful wife, and that if Geoffrey should die in Hugh's lifetime ('et si contingeret ipso Hugone vivente predictum Galfridum decedere') then Alice should have for her dower five virgates of his [Hugh's] land in Blaby. The demandants add that the demanded virgate is one of the five. (*Note continued on the opposite page.*)

15. BAYEUX *v.* BERYHALE.[1]

Entré *ad terminum qui preteriit*, ou il dit qe le demaundaunt fust bastarde; et l'altre alege plè entre ly et estraunge ou il fust trové mulieré par certificacioun etc.

Johan de Meinil[2] porta soun bref *ad terminum qui preteriit*, en les queux le tenaunt n'avoit entré si noun par H.,[3] qi heir etc. qe ceo lui lessa a term qe passé est.[4]

Lauf. Come heir H. ne poet rien demaunder, qar vous estes bastard.

Herle. A ceo n'avendrez vous mie, qar einz ces heures si portames une[5] bref vers un E., le quel dit qe nous fumes bastard. Par qei nous suyms bref al evesqe de Loundres qu'il enquist de la bastardie; le quel evesqe encerta ceste courte qe nous fumes mulieré; et desicome ceste court est ascerté de nostre estat et pur[6] mullieré, jugement si vous en nostre persone pusset bastardie alegger. (Et dit en quel roulle la certeficacioun fust entré.)

Launf. A ceo plee dount vous parlez[7] nous ne sumes partie, 'et res inter alios acta neminem preiudicari debet' par qei nous demaundoms jugement[8] etc.

Westecot.[9] Cel maxime ne se estent pas[10] en ceo cas.[11]

Berr. Coment qe la curte est ascerté, unqore poet la partie aschune choce dire par qei la certificacioun n'est mye pleyne. Par qei il covent attendre si la qe nous sachoms un ou[12] altre etc.

[1] *Vulg.* p. 53. Text from *A*: compared with *B*, *D*, *L*, *M*, *P*, *Q*, *R*, *S*, *Y* (f. 83) and a note in *X*. [2] *Name doubtful in A*; Un homme *Al. Cod.* [3] *Ins.* soun pere *Al. Cod.* [4] *Om.* qe ceo . . . est *A*, *D*; *supplied from M*; *sim. B*, *L*, *S*, *Y*. [5] un *D*; autiel [autel] *B*, *L*, *M*, *P*; une tiel *S*; un autiel *Y*. [6] *Om.* et pur *B*. [7] qe vous alleggetz *B*, *L*, *M*. [8] *Om.* acta . . . jugement *A*, *D*. *Text from M*; *sim. L*; acta aliis non preiudicat *S*. [9] Bereforde *Y*. [10] ne tynt pas leu *M*; *sim. B*, *L*, *P*, *S*, *Y*. [11] Herle. Ceste maxime est general en cas la ou homme allege bastardie et qe si la court soit une foyze ascerte qe muliere par cele certificacioun tendra leu pur toux jours *R*. [12] *Om.* ou *A*, *D*; *ins. Al. Cod.*

Note from the Record (*continued*).

The tenant says that the demandants can claim naught of the said dower by virtue of the said writings, for Geoffrey outlived Hugh; and that they are ready to aver.

The demandants say that Geoffrey died in Hugh's lifetime, and pray that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded for the quindene of Hilary. The record shows no attempt to abate the writ in consequence of its containing the words *unde nichil habet*, and indeed does not show that those words were in the writ.

15. BAYEUX *v.* BERYHALE.[1]

The bishop's certificate, given in answer to a royal writ, to the effect that a litigant is legitimate, is conclusive not only between parties and privies, but against strangers also.

[Thomas de Bayeux] brought his writ [of entry] *ad terminum qui praeteriit*, saying 'into which [the tenant] had no entry save by H. [the demandant's] father, whose heir [the demandant] is, who leased to [the tenant] for a term that has expired etc.'

Laufer. As heir you cannot demand, for you are bastard.

Herle. To that you cannot get, for before now we brought a writ against one E., who said that we were bastard. And therefore we sued a writ to the Bishop of London bidding him inquire of the bastardy; and he certified this Court that we were legitimate; and, since this Court is certified that we are of legitimate status, we demand judgment whether you can allege bastardy in our person. (And he referred to the roll in which the certificate was entered.)

Laufer. To the plea of which you speak we were no party, and 'res inter alios acta nemini praeiudicare debet.'[2] So we demand judgment.

Westcote.[3] That maxim does not extend to this case.

Bereford, C.J. Although the Court is certified [of this matter], still the party may be able to show that the certificate is not complete. Therefore you must wait until we know whether this be so.

[1] This case is Fitz., *Bastardy*, 23. Proper names from the record.

[2] This maxim comes from the Code, 7, 56, 2 and 4: 'Nec in simili negotio res inter alios actas absenti praeiudicare saepe constitutum est.'

[3] In one of our books this remark comes from the Chief Justice.

Hervi alias rehersa etc.[1] et dit: Purceo qe ceste court est ascerté qe H. est mulieré, la quele est pleine et solonc quele certificacioun le jugement rendu,[2] et cesti q'une fiez est trové[3] mulieré, entre qi[4] qe ceo seit, il entre toutz mulieré,[5] si agarde la court etc.[6]

{*Berr.*[7] Tut seit la court assarté ceynz enz ces houres, la partie purra dire qe la certificacioun n'est pas pleyne si vous ne diez en quel roule.

Herle le dit; et fut quis.

Berr. Pur ceo qe trové est par recorde qe la court etc. qe mulieré, la quele suffit pur toux jours, agarde la court qe l'autre recovere seisine de terre.}

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 482d, Som.

Thomas de Baiocis, by John de Gaston his attorney, demands against William de Beryhale[8] a messuage and two acres and a rood of land in Stokegiffard[9] as his right and inheritance, and into which William has no entry save through (*per*) Thomas de Baiocis, the demandant's father, who demised them for a term that has expired. The descent is traced from the elder Thomas to the demandant as son and heir.

The tenant, by John Manshipe his attorney, after formal defence, says that the demandant can claim no right on the seisin of Thomas and can be no one's heir; for he says that the demandant is a bastard; and this he is ready to aver where and when [it shall behove him].

The demandant says that he ought not to be repelled from action in this behalf by this exception, for heretofore in the Court here, by the King's writ, he demanded against one William Warroke de Toppesfeld two acres of land in Toppesfeld as his right on the seisin of the said Thomas his father; and that in the same Court William objected to him a similar exception of bastardy; wherefore the Bishop of London was commanded that, convoking before him those who should be convoked, he should diligently inquire the truth of this matter, and make known the result of the inquiry to the

[1] Hervi rehercea le ple le terme de Seint Hillaire *M.* *To the same effect B, L, P, S.* [2] *Om.* la quele . . . rendu *A, D.* *Text from M; sim. B, L, P.* [3] *Om.* trove *A, B, D; ins. L, M, S.* [4] queux *L, M, P, S.* [5] soit, deit pur muliere estre tenu etc. *M; sim. P, S*; et celuy qest une foiz moillere est moillere pur toux jours entre queux qe ceo soit *B.* [6] qe H. recovere sa seisine etc. et lui en la mercye *M; sim. B, L, S.* *Y ends thus:* Bereforde. Cel maxime ne tendra point lieu en ceo cas, car une foiz trove muliure en court-jammes nè serra en meisme la court bastarde, par qai etc. [7] This ending of the case from *R.* [8] Beriale *below.* [9] There is a Stoke Gifford in Gloucestershire. But this place seems to be the modern Stoke Rodney near Wells.

[And search was made for the roll.] And in Hilary Term STANTON, J., rehearsed the plea and said: 'For that this Court is certified that [the demandant] is legitimate and the certificate is complete and judgment was rendered upon it, and for that he who is once legitimate is always legitimate, no matter between whom the question arises, therefore this Court awards that the demandant recover his seisin etc.'

{BEREFORD, C.J.[1] Although the Court here has been certified before now, the party may say that the certificate was not complete, unless you name the roll.

Herle named it, and search was made.

BEREFORD, C.J. For that it is found by record that he is legitimate, and this suffices for ever, therefore this Court awards that [he] recover seisin of the land.}

Note from the Record (*continued*).

justices here by his letters patent; and that the bishop signified to the Court here by his letters that he had inquired, and that the demandant is legitimate and begotten in lawful wedlock (*de legitimo thoro*) of Thomas de Baiocis and Maud his wife; and since the bishop on a former occasion (*alias*) at the King's command has certified the Court here that the demandant is legitimate, he prays judgment.

And therefore, inspection having been made of the record and process of the suit had here between the demandant and William Warroke, to wit on the quindene of Trinity last, it is found that the said suit then remained without day by reason of a similar exception then objected to the demandant; and that afterwards the bishop certified by his letters that the demandant is legitimate, as aforesaid; and that the said suit between the demandant and William Warroke remains to be resummoned here, by reason of the said certificate, on the quindene of Hilary next coming; therefore a day is given to the demandant and tenant on the quindene of Hilary, and then what ought of right to be done shall be done.

Afterwards on that day the parties came by their attorneys, and because on an inspection of the roll for the last Trinity term it is found that the bishop, upon a similar objection of bastardy propounded against the demandant in this Court, certified the justices here that the demandant is legitimate, it is awarded that the demandant recover his seisin of the tenements against the tenant, and that the tenant be in mercy.

[1] An alternative version for the end of the case.

16. UGHTRED *v.* CHAUMONT.[1]

Wast porté vers enfaunt deinz age, qe pria soun age, *et non habuit* : ou il alegea tenaunce en comune d'une femme tenaunt en dower, qe fust mye nomé.

Waust de tenemenz tenuz en comune ou le deffendaunt pria soun age : et non habuit : quod mirum fuit.

Un A. porta soun bref de wast vers un B.[2] et counta[3] q'a tort avoyt fait wast etc. en un boys qe eux[4] teinderent en comune.

Warr.[5] Un William teint cel boys en comune ove A. qe se pleint, le quel fust seisi de douner[6] et vendere a sa valunté[7] et morust seisi. Après qi mort B. entra com fitz et heir ; et est dedeinz age et prie soun age.

Hedon. Nostre actioun sourde de un wast qe vous mesme avet fait, et n'entendomps mye qe de vostre tort[8] demene devet vostre age avoir ou[9] nostre actioun targer.

Warr. Ceo est une plee qe tot est terminé en la realté,[10] par statut qe dit qe le tenaunt[11] elise un des deux voies : ou de prendre sa partie en certeyne[12] ou trover seurté qe mès ne preigne si noun auxint com ses comoners[13] ; mès duraunt soun nounage al issue q'apent a tiel bref ne poet il estre partie. Jugement, si nous ne devoms nostre age avoir.[14]

Hoc non obstante la court luy chacea outre.

Warr. Une Maude teint ce boys ou il se pleynt ceo waste estre fait en comune ove A. et B. nient nomé[15] en bref. Jugement du bref.

Hedon. Par taunt n'abateroit mye nostre bref, qar Maude n'ad rien en ceo boys sy noun[16] dower del assignement A., issint qe si le wast soit trové et[17] la severalté[18] faite, ele ne porra rein prendre par resoun de sa terce partie[19] fors de la purpartie[20] A., de qi assignement ele teint, et nient de la porcioun B. qe a luy est[21] estraunge. Et

[1] *Vulg.* p. 54. Text from *A* : compared with *B*, *D*, *L*, *M*, *P*, *Q*, *S*, *X*. Headnotes from *A* and *B*. [2] *Om.* vers . . . B. *A*, *D*. [3] *Om.* counta *A*, *D*. [4] touz *A*, *D*, *Q* ; eux *M*, *S* ; qil *B*, *L*. [5] Everwik (*throughout the case*) *B*, *L*, *M*, *P*, *Q*, *S*. [6] dower *A*. [7] seisi a vendre et coper *X*. [8] ne de vostre fet *L*, *P*. [9] a *L*, *S* ; et *P*. [10] relate *A*. [11] defendant *L*, *P*, *S*. [12] *Om.* en certein *A*, *D* ; *ins.* *L*, *P* ; en certein leu *B*. [13] parceners *B*. [14] noun age a tiel il ne seet ne put eslire, et demandoms jugement de pus qil ne put estre partie duraunt soun nounage a tiel issue com append a cesti bref sil ne deit son age avoir *M* ; *sim.* *L*, *P*. [15] nometz *A*, *D*, *M*, *Q*, *P* ; nome *B*, *L*, *S*. [16] *Ins.* en *B*, *M*, *L*, *P*, *S*. [17] en *B*. [18] severalte du boys, *L*, *M*, *P*, *S*. [19] *Om.* par . . . partie *A*, *D* ; rien clamer par resoun de son terce *B* ; de sa terre *L*. [20] porcioun B. [21] B. a qi ele est *B*.

16. UGHTRED *v.* CHAUMONT.[1]

In an action for waste between tenants in common the parol will not demur for the defendant's nonage if he is personally charged with the tort. If *A* and *B* hold in common, and *A* has assigned dower to a woman, *qu.* whether the doweress is a necessary party to an action of waste by *A* against *B*.

One A. brought a writ of waste against one B. and counted that B. had wrongfully done waste in a wood which they held in common.

Warwick.[2] One William held this wood in common with the plaintiff, and thereof was seised, giving and selling at his will, and died seised; and after his death B. entered as son and heir and is within age and prays his age.

Hedon. Our action arises from waste committed by you yourself, and we do not think that you ought to 'have your age' or delay our action where the cause is your own tort.

Warwick. This is a plea the termination of which is wholly in the realty; and this by virtue of the Statute[3] which says that the tenant is to elect between two courses: either to take his share of [the tenements] in certain or to find surety that for the future he will not take more [of the profits] than his fellows. But during his nonage [the tenant] cannot make such an election, and so he cannot be a party to the issue that is appropriate to this writ. Judgment, whether we ought not to have our age.

Nevertheless the Court drove him to answer over.[4]

Warwick. One [Katherine], not named in the writ, holds the wood, in which he complains that waste has been made, in common with A. and B. Judgment of the writ.

Hedon. Not thereby can he abate our writ, for she has nothing in this wood, except dower by A.'s assignment; so that, if the waste be found and the partition be made, she will take nothing in respect of her third part except in the share of A., by whose assignment she holds, and will take nothing in the portion of B., who is a stranger to

[1] This case is Fitz., *Wast*, 25. Proper names from the record.

[2] But most MSS. give Everwik (*i.e.* York) throughout the case.

[3] Stat. Westm. II. c. 22.

[4] An annotator (MS. *B*) has expressed surprise at this decision.

d'aultrepart si ele fust nomé ceo serroit a supposer q'ele out[1] owel estat ove A. et B. la ou ele n'ad qe dower.

Warr. Et nous, depus qe vous avet conu qe le boys est tenu en comune entre A., B., et M., et ele nient nomé, jugement si cesti bref[2] ne deive abatre.

Et sic ad iudicium.[3]

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 430, York.

John de Calvo Monte was summoned to answer Robert Ughtred in a plea that, whereas Robert and John hold together *et pro indiviso* a wood in Colton in Aynsty, John has made waste and sale to Robert's disherison. Robert, by his attorney, complains that whereas Robert and John hold forty acres of wood in the vill of Colton, John has made waste, to wit, by felling three hundred oaks, price two shillings apiece; damages are laid at forty pounds. (*Note continued on the opposite page.*)

17. ANON.[4]

Entré fondu sour novele disseisine par enfant deinz age: ou dit fuist qe le demandant ne fust pas en cas de Statut. Et le tenant voleit avoir fet sa ley de nounsomouns, et ne fuist pas resceu, pur ceo qe le demandant fust deinz age et avoit counté vers lui etc.

Un enfaunt dedenz age porta soun bref d'entre sur la disseisine vers un tenaunt, et counta de la seisine son ael en le temps le Roi Henri descendaunt a lui linealment, et dit qe le tenaunt n'avoit[5] entré si noun pus la diseisine faite a soun ael en temps le Roy Henri. Le tenaunt vient en court par le *cape*.

Roston.[6] Nous avoms nul jour a r[espoundre] a le demaundaunt, einz sumes venuz en court a saver une defaute et a defere[7] un somouns,[8] et sumes prest a defaire[9] par nostre ley.

Hedon. Nous sumes denz age, et nous ne poums estre partie a receivre la ley, et avoms counté devers luy a la nature com appent,[10] et il ne r[espount] nent. Jugement de lui etc.[11]

[1] eust *M*; ust *L*, *P*, *S*; ceo luy supposereit avoir *B*. [2] *Om.* bref *A*. [3] *Om.* this clause *B*, *L*, *S*. [4] *Vulg.* p. 54. Text from *A*: compared with *B*, *D*, *L*, *M*, *P*, *Q*, *S*, *X*, *Y* (f. 83d). Headnote from *B*. [5] et counta . . . navoit *from M; sim. L*, *S*, *Y*; *shortened in A*, *D*. [6] Le tenaunt fut venu en court pur fere sa ley et pur sauver la defaute q'il avoit fet en mesme le ple. Et qaunt lenfaunt avoit counte, Ruston pur le tenaunt dit *M; sim. L*, *P*, *S*, *Y*. [7] defendre *A*; defere *Al. Cod.* [8] *Ins.* qe le viconte sur li avoit testmoigne *P*; *sim. Y*; *ins.* sour nous tesmoigne *B*. [9] defendre *D*. [10] luy com appent a la nature de nostre bref *M*; *sim. L*, *P*, *Y*. [11] *Ins.* com de noun defendu *M*, *L*, *Y*.

her. On the other hand, if she were named, that would suppose that she had equal estate with A. and B., whereas she has only dower.

Warwick. And we pray judgment whether this writ should not be abated, since you have admitted that the wood is held in common between A., B., and [Katherine], and she is not named in the writ.

And so to judgment.

Note from the Record (*continued*).

And John comes by his guardian and says that he ought not to answer Robert to this writ; for, whereas by his writ Robert supposes that they alone hold the wood in common, William de Bere and Katerina his wife hold by way of her dower a third part of the wood together *et pro indiviso* with Robert and John, and so held on the day of writ purchased; and this he is ready to aver, and thereof he prays judgment.

A day is given to them here three weeks from Easter, with a saving for future argument ('salvis eis racionibus suis hinc inde dicendis etc.')

17. ANON.

In an action by an infant the tenant cannot after the count prove non-summons by his law. *Semble* that, notwithstanding Stat. Westm. I. c. 47, the parol shall demur for the demandant's nonage in a writ of entry on the disseisin done to his ancestor, if the suit is not fresh and the ancestor did not sue and die pending the plea.

An infant within age brought his writ of entry *sur disseisin* against a tenant, and counted on the seisin of his grandfather in the time of King Henry, with lineal descent to himself, and said that the tenant had no entry except after (*post*) the disseisin done to [the demandant's] grandfather in the time of King Henry. The tenant came into court on the *cape*.[1]

Ruston. We have no day to answer the demandant, but are come into court to save a default[2] and to defeat the summons [by proving that it was not made]; and we are ready to make our law.

Hedon. We are within age, and cannot be a party to receive the law; and we have counted against him according to the nature of our writ, and he makes no answer. Judgment against him [as undefended].

[1] Some books tell us that the infant counts against the tenant.

[2] Some add: 'which the sheriff has testified against us.'

Hervi.[1] L'enfaunt ne poet estre partie a ceste ley receyvre, par qei jeo loo qe vous r[espoingnez].[2]

Rouston. C'est[3] un bref de dreit, jugement si duraunt vostre nounage deviez a cesti bref estre r[espoundu].

Hedon. Nous avoms par statut qe la ou diseisine est fait a l'auncestre l'enfaunt dedenz age, que pur le tendre age[4] d'une part ne d'aultre, ne seyt le plee[5] delayé q'il ne soit r[espoundu], de quel age qu'il soent. Et prioms benefitz de statut.

Hervi regarda le statut et dit[6]: Statut ne vous eyde par deus resouns. La primere est purceo qe la cause de statut par qei actioun ne serra delayé d'une part ne d'aultre pur tenderesse d'age si est pur la fresche siwte faite après la[7] mort l'auncestre[8] le demaundaunt.[9] Mès ore avet counté d'une diseisine faite a vostre ael en temps le Roy Henri, issint qe la siwte n'est mye fresche. L'autre resoun est purceo qe le statut suppose qe le disseisi porta l'assise[10] et morust[11] pendaunt le plee. Mès ore ne dites mie qe vostre ael morust pendaunt le plee entre lui et le[12] diseisour.[13] Par qei statut ne vous eide point.

Et sic pendet.

{*Hervi.*[14] Statut est fet pur cause de fresche sute après la disseisine, et vous avez counté de disseisine fet en tens le Roi H. par qei etc. Secundo, vous ne dites pas qe vostre auncestre morust en pledant. Par qe etc.

Opinio fuit q'il attendreit son age.}

18. RICHEMUND *v.* TANNUR.[15]

Ael, ou il alegge qe cely parmy qy il avoit counté fust bastarde: et receu, nent aresteaunt q'il avoyt abatu un mort d'auncestre par clamer.

Nota en un bref d'ael qe bastardie fust chalangé[16] en la persone celuy parmi qe[17] le demaundaunt counta et fust resceu,[18] *non obstante*

[1] Herle *Y.* [2] Hervi. Responez. *B.* [3] Ceste *A.* [4] que . . . age *M*; *om. A, D*; pur le nounage les heirs *L*; pur la tendresse del age *P.* [5] soit laction *L, M, P*; laction del demandaunt *Y.* [6] regarda . . . dit *from M; sim. L, P, S, Y; om. A, D.* [7] *Om.* la *A.* [8] apres la disseisine fet al auncestre *M, P, Q, Y.* [9] apres la diseisine *B, L, S.* [10] disseisi must son plee par assise *B*; mue son plee par assise *L*; moud sun plee par assise de novele disseisine *Y.* [11] *Om.* et morust *A*; *ins. D, L, M, P, Q, S, Y.* [12] son *L, M, S, Y.* [13] diseisi *D*; diss' *A.* [14] End of the case in *X.* [15] *Vulg.* p. 54. Text from *A*; compared with *B, L, M, P, Q, S, Y* (f. 51d). Headnote from *A.* [16] alegge *Al. Cod.* [17] persone le pere *B.* [18] *Ins.* de court *L, S.*

STANTON, J. The infant cannot be a party to receive this law, so I advise you to answer.

Ruston. This is a writ of right. Judgment, whether you should be answered to this writ during your nonage.

Hedon. We have it by Statute [1] that where disseisin is done to the ancestor of an infant the plea [2] shall not be delayed by reason of the tender age of either party, so that an answer shall be given, be the age of the parties what it may. We pray the benefit of the Statute.

STANTON, J., looked at the Statute and said: For two reasons the Statute does not help you. In the first place, the reason why the Statute will not have the action delayed by the tender age of either party is to be found in fresh suit made after the death of the demandant's ancestor.[3] But in this case you have counted on a disseisin done to your grandfather in the time of King Henry, so the suit is not fresh. Secondly, the Statute supposes that the disseisee brings an assize of novel disseisin, but dies pending the plea. But here you do not say that your ancestor died pending a plea between him and his disseisor. So the Statute does not help you.

And so the case pends.

{STANTON, J.[4] The Statute supposes fresh suit after the disseisin, and you have counted of a disseisin in the time of King Henry. Wherefore etc. Secondly, you do not say that your ancestor died while pleading. Wherefore etc.

The [Court's] opinion was that he should await his age.}

18. RICHEMUND *v.* TANNUR.[5]

In the past a bastard could abate a mortdancestor by 'claim.' Therefore a man's legitimacy is not proved by the fact that he has 'claimed' and abated a writ. Nowadays a 'claim' can be defeated by an allegation of bastardy.

In a writ of *ael* bastardy was alleged in the person of one through whom the demandant claimed; and this was allowed, notwithstanding

[1] Stat. Westm. I. c. 47.

[2] Or 'the action of the demandant.'

[3] Or 'after the disseisin.' Coke, Sec. Inst. 258, says that the suit to be fresh must be brought within year and day after the disseisor's death.

[4] This is taken from a set of abbreviated reports.

[5] Proper names from the record.

qe le demaundant dit qe [1] le tenaunt avoit porté le mort d'auncestre [2] vers mesme celuy [3] en qi persone cel bastardie fust allegé ou il clama par mesme la descente et par taunt accepté com [4] mulieré. Et fust la cause pur qei le demaundaunt ne prist nul avauntage de ceo qe soun pere [5] avoit clamé et abati le mort d'auncestre *ut supra*, purceo qe en le [6] temps qe le clame se fist le bastard poet clamer [7] en bref de possessioun et le bref abatre. Mès issint ne poet il mye [8] ore. {Et [9] fuist la cause pour quey le demaundaunt ne prist nule avauntage del clamer soun pere pour ceo qe a cel temps il pout bien clamer et par taunt abatre bref de possessioune. Mès ore qaunt il est demaundaunt ne puist il pas avoir cel avauntage.} Par qei le demaundaunt fust chacé a dire le quel celui parmi qi il counta [10] fust bastarde ou noun. Et il dit qe mullieré, prest etc.[11]

{En [12] bref de ael la descente fu fet parmi A. et bastardie fut aleggé en la persone A.

Hedone. A ceo n'avendrez pas, qar vous mesmes portastes bref de mordauncestre de alters tenemenz vers A. qi clama par mesme la descente et abati le bref en tens le Roi Henri. Jugement, si vous serrez r[ece]u de li bastarder.

Hervi. Ore put il voider clamer par bastardie; si ne poeit hom pas a cel tens.

Hed. Mulieré: prest.

Et alii bastard: per patriam quia mortuus est A.}

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 455d, York.

John, son of Peter de Richemund, by his attorney, demands against Oliver, son of John le Tannur de Richemund, a messuage and sixteen acres of land and two parts of a messuage in Richemund, whereof John le Tannur, grandfather of the demandant, was seised in his demesne as of fee on the day on which he died. The descent is traced from John the grandfather to Peter as son and heir, and from him to the demandant as son and heir. (*Note continued on the opposite page.*)

[1] *Ins.* le pere *B.* [2] *Ins.* devaunt Sire Hughe de Cressingham *L.*; *sim.* *M*, *P*, *Y*; Henri de Cressingham *S.* [3] vers le pere le demandant *L*; *sim.* *M*, *P*, *S*, *Y*; *Q* agrees with *A.* [4] pur *L*, *M*, *P.* [5] poer *A*; pere *Al. Cod.* [6] ceu *Y.* [7] si pust bien le bastard clamer *L*, *M*, *P*, *Y.* [8] *Ins.* icy *A.* [9] This statement from *B.* [10] *Sic L*, *M*, *P*, *S*, *Y*; dire le quel il *A*; dire sil *Q*; dire qe il *D.* [11] Add a joinder of issue *Al. Cod.* [12] This version from *X.*

that the demandant said that the tenant had brought the mortdancestor [before Sir Hugh of Cressingham] against the very person whose bastardy was alleged,[1] and that that person pleaded 'claim by the same descent,' and that thus he was accepted as legitimate. And the cause why the demandant took no advantage by the fact that his father had abated the mortdancestor by this 'claim' was that at the time when the 'claim' was made a bastard could 'claim' and abate a possessory writ. But he cannot do that nowadays. {And the cause why the demandant took no advantage by his father's claim was that at that time he might well claim and abate the possessory writ. But now when he is demandant he cannot have this advantage.[2]} So the demandant was driven to say whether the person through whom he counted was bastard or not, and said that he was legitimate. Ready etc.

{In[3] a writ of *ael* the descent was made through one A., and bastardy was alleged in his person.

Hedon. You cannot get to that, for you yourself brought a writ of mortdancestor for other tenements against A., who 'claimed' by the same descent and abated the writ in the time of King Henry. Judgment, whether you can be received to bastardise him.

STANTON, J. Nowadays one can defeat a 'claim' by alleging the bastardy of the claimant; but at that time one could not.

Hedon. Legitimate. Ready.

The others said 'bastard.' So to the country [and not to Court Christian], since A. is dead.}

Note from the Record (*continued*).

The tenant, by his attorney, after formal defence, says that the demandant can claim nothing in those tenements on the seisin of John by means (*per medium*) of Peter, for Peter was bastard; and this he is ready to aver etc.

The demandant says that Peter was legitimate and not bastard.

A *venire facias* is awarded for five weeks from Easter.

This seems to be the case that is reported, though, as was to be expected, the roll says nothing of the demandant's attempt to reply to the plea by referring to the previous assize of mortdancestor.

[1] Or 'against the demandant's father.'

[2] This alternative statement from a single MS. The words 'when he is demandant' seem to alter the sense and to come from someone who does not apprehend the point of the case.

[3] From a set of abbreviated reports.

19. MAREYS *v.* COGAN.[1]

Replevine, ou il avowe pur sute de sa seisine pus la limitacioun de bref de novele diseisine : l'altre mist avaunt feffement d'auncestre en descharge : ou piert qe privé [et] estraunge soy pount descharger par le *contra formam feoffamenti*.

Si le seignur acroche sute contre statut et le tenant aliene après, *questio* si le feffé pusse user le *contra formam feoffamenti* ou il se deschargereit par *replegiari*.

Herberd[2] de Marreys se pleint qe Thomas Cogan[3] a tort prist ses avers etc.

Scrop. Thomas avowe la prise bone et renable par la reson qe Herberd tent de lui etc. par homage fealté et par service de chevaler etc. et par siwite a sa cou etc., de quele sute Thomas mesme fut seisi par my la mayn Herberd com par my etc. ; et pur la sute arrere si avowe il etc. sur H. etc.

Will.[4] Veez cy le fet vostre auncestre qe tesmoigne q'il nous enfeffa de mesme ceux tenemenz etc. a tenir par homage et fealté et service de chevaler sanz sute fere. Jugement, si encontre le fet vostre auncestre pussez pur siwite destresse avower.

Scrop. Nous avoms dit qe nous avoms esté seisi mesme de la sute par my vostre fet demene.[5] En affirmaunt nostre primer dit si dioms qe nostre pere et nostre ael de cele sute seisi furent en tut temps continualment pus le temps qe[6] bref de novele diseisine court[7] ; et depus qe sumes cy en une plè de possessioun, ou nous voloms averrer nostre seisine[8] demene et de noz auncestres etc. *ut supra*,[9] jugement si nostre avowerie ne soit bone.

West.[10] Nous avoms par statut qe la ou homme est feffé par chartre q'il ne soit distreint a siwite fere s'il ne soit tenu a cele sute fere par paroles especials en sa chartre ou lui ou ses auncestres cele sute fere soleient avant[11] le primer passage le Roy Henri en Bretaygne. Mès nous voloms averrer qe vous et voz auncestres ne furent unqes seisi avant le passage etc. Jugement, si encontre le fet vostre auncestre,[12] le quele nous acquite de suwite, pussez destreindre etc.

[1] *Vulg.* p. 54. Text from *M* : compared with *A*, *B*, *D*, *L*, *P*, *Q*, *S*, *X*, *Y* (f. 168d). Headnotes from *A* and *X*. [2] Robert *B*. [3] Cobham *L* ; Coghan *Y*. [4] William *M* ; Willuby *Q* ; Willeby *D*. [5] Nous avoms lie nostre avowerie par mye vostre mayn de nostre seisine demene *L*. [6] la limitacioun de *A* ; *sim. D*. [7] *Om.* court *A*, *D*. [8] possession *L*. [9] *Ins.* et ceo nous doune title *B*. [10] Rust. *B* ; Roston *S*. [11] apres *A* ; avant *Al. Cod.* [12] *Om.* auncestre *M*.

19. MAREYS *v.* COGAN.[1]

A lord avows on the plaintiff for suit of court and relies on his own seisin by the plaintiff's hand. The plaintiff puts forward a charter of feoffment made to his father by the lord's ancestor, not expressly reserving suit, and is ready to aver that the suit was not done before the limitation mentioned in Stat. Marlb. c. 9. *Qu.* whether in this action of replevin the plaintiff can make good the right given to him by this Statute or is put to the *contra formam feoffamenti.*

Herbert de Mareys complains that Thomas de Cogan wrongfully took his beasts etc.

Scrope. Thomas avows the taking as good and reasonable, for that Herbert holds of him by homage and fealty and by knight's service etc., and by suit to his court etc.; of which suit Thomas himself was seised by the hand of Herbert as by the [hand of his very tenant]; and for the suit arrear he avows etc. upon Herbert etc.

Willoughby. See here the deed of your ancestor which witnesses that he enfeoffed us of these tenements etc. to hold by homage and fealty and by knight's service without doing suit of court. Judgment, whether you can avow a distress for suit against the deed of your ancestor.

Scrope. We have said that we ourselves have been seised of the suit by your own act. In affirmance of this assertion we say that our father and grandfather were always seised of this suit ever since the time[2] from which the writ of novel disseisin runs; and, since we are here in a possessory action, and, as aforesaid, are ready to aver our own seisin and that of our ancestors, we pray judgment whether the avowry be not good.

Westcote. We have it by Statute that where a man is enfeoffed by charter he is not to be distrained to do suit unless he be bound to do it by express words in his charter, and unless he or his ancestors were accustomed to do that suit before the first passage of King Henry into Brittany.[3] But we will aver that you and your ancestors were not seised before the passage etc. We pray judgment whether you can distrain against the deed of your ancestor which acquits us.

[1] Proper names from the record.

[2] Henry III.'s first voyage into Gascony: by the joint operation of Stat. Westm. I. c. 39, and Stat. Westm. II. c. 40.

[3] Stat. Marlb. c. 9. The voyage to Brittany was in 1230; that to Gascony in 1242. See Pollock and Maitland, Hist. Engl. Law, ii. 51.

Denom.[1] Yl i sount ij. pointz en le statut qe vous alleggez. La primere[2] est qe la ou homme est feffé *ut supra*[3] 'veluti per liberum servicium tot solidorum per annum'[4]; mès vous n'est mye en le cas: ne par l'autre point ne prendrez avauntage, qar nous avoms avowé de si[5] haut temps[6] com statut nous doune bone avowerie; et si vous entendez qe nous et noz auncestres avoms mespris, vous avez[7] la *contra formam feoffamenti*, q'est ordeiné en le cas. Par qei nous demandoms jugement si vous ne devez a nostre seisine respondre.[8]

Pass. ad idem. Le statut parle 'quod non distringatur ad sectam nec ad aliud[9] servicium contra formam feoffamenti,' issint qe s'il se deschargereit par ceste voie de la sute, par mesme la r[eson][10] de chescun[11] autre service, et issint servereit le *ne iniuste vexes* de nent. Et d'aultrepart, nous n'avoms autre chose fete[12] mès continué l'estat qe noz auncestres nous lesserent. Mès ore est issi, qe si nostre avowerie fut agardé malveis, si serroms[13] amercié, et ceo serroit tort, qar nous n'avoms nul tort fet. Par qei etc.

Ber.[14] Il y ad meynt homme qe porte son bref de custumes et services ou il purreynt avoir recoverer par autre voye.[15] Coment donqes qe vous dites[16] q'il se deschargereit par le *contra formam feoffamenti* ou par le *ne vexes*, ceo ne prove nent q'il ne serra deschargé par ceste voye.[17] Et d'aultrepart un homme jadys gist malade et fut si feble q'il fut suppris et jeust paumee[18] a ceo qe lui fut avys[19] il vint en un lieu et la veist[20] iij. peires de fourches et chescun plus haut de autre, et en le plus court[21] son ael pendre, et en le meunel[22] son pere pendre, et demanda qi ceo fut.[23] Un lui counta qe son ael avoit fet une diseisine et pur cele trespas si fut il pendue etc. et son fitz après lui pur sa continuance.[24] Et dit outre qe cele peire de fourches qe estoit si haut si fut purveu a son oeps[25] qaunt il fut mort et pur sa continuaunce.[26] Et pur ceo ne affiez mye a ceo qe vous

[1] Johane Deno' *S*; Hedon *Y*. [2] Le primer *A*. [3] *Om.* ut supra *A*, *D*. [4] solidatorum annuatim *A*. [5] auxint *A*. [6] de autiel temps *B*. [7] mespris vos avers, suez *S*. [8] *Om.* Par . . . respondre *A*. [9] aliquid *L*. [10] maniere *A*. [11] *Ins.* maniere *A*, *D*. [12] *Om.* fete *M*. [13] serrioms *Y*. [14] Herle *L*, *S*. [15] recoverir par destresse *L*, *S*, *Y*. [16] pernetz *A*, *D*; provez *Vulg*. [17] qil porra descharger sei par ceste voie, et si vous avoit continue lestat vos auncestres qest torcenouse, en taunt fetes le plus tort *A*; *and so speech ends*. *Sim. D, Q. Om. at this point the whole of this speech until after* 'voye,' *and begin with* 'Un homme,' *B*. [18] qil jeust palmie *B*; qil gist paumee *L*; qil fut suspris (?) et just' paume *P*; qil juyst palme *S*; qil fut suppris et en traunz et *Y*. [19] paumee et ly fust avys *L*. [20] vist *L*. [21] bas *B*. [22] meunel *P*; mulven *Y*; mulwein *L*; mylven (?) *S*; milour *B*. [23] demanda par qei il furent issi pendu *L*; *sim. B*, *S*. [24] et son pere avoyt cel seisine continue, et pur ceo fust yl la pendu *L*. *Ins.* et pur ceo il pendit plus haut *B*. [25] eos *P*. [26] pur ceo qil avoit plus longement continue *B*. *Om. this sentence*, *Y*.

J. Denom. There are two points in the Statute that you allege. First there is the case when a man is feoffed 'as by the free service of so many shillings a year': but you are not in that case. Nor can you take advantage of the other point, for we have avowed on a time as high up as Statute gives us a good avowry. And if you think that we or our ancestors have done wrong,[1] then you have the *contra formam feoffamenti* which is ordained for your case. Therefore we pray judgment whether you ought not to answer to our seisin.

Passeley to the same effect: the Statute says, 'is not to be distrained for suit or any other service against the form of the feoffment'[2]; so, if by this method he could discharge himself of the suit, he could do the same in the case of any other service; and in that case the *ne iniuste vexes* would be of no use. Moreover, we have done nothing more than continue the estate that our ancestors left to us; and in this case, if our avowry be adjudged bad, we shall be amerced, and that would be wrong, for we have done no wrong. Wherefore etc.

Bereford, C.J. There is many a man who brings his writ of customs and services where he might recover by other means. Therefore, although you say that he might discharge himself by the *contra formam feoffamenti* or by the *ne vexes*, that does not prove that he cannot discharge himself in this way [by replevin]. {And if you have continued the tortious estate of your ancestors, you have done all the more wrong.} Once upon a time a man lay sick abed, and so weak was he that he swooned, and lay in a trance,[3] and it seemed unto him that he came unto a certain place and there saw three pair of gallows, each one higher than the last, and on the shortest hung his grandfather, and on the mean his father; and he asked wherefore this was so; and one answered him and said that his grandfather did a disseisin, and for this trespass was hanged, and after him for continuance in the wrong his son was higher hanged, and the third and highest pair of gallows was for his own proper use when he should be dead because of the yet longer continuance in the wrong. So do not you trust too much to what you say about your doing no wrong in

[1] Or 'have wrongfully taken your beasts.'

[2] Stat. Marlb. c. 9: 'ad huiusmodi sectam vel ad aliud contra formam feoffamenti de cetero non teneantur.'

[3] See the variants on the opposite page. The word *paumé* represents *pasmé*, *pâmé*, which is traced to Lat. *spasmus*. In one of our books (Y) a relatively modern hand has written 'Un pleasant fable.'

dites qe vous n'avez nul tort de ceo qe vous avez continué l'estat vostres auncestres, qar si lour estat soit torcenouse et le vostre etc.[1]

Denom.[2] Et moy semble[3] qe le *contra formam etc.* si gist proprement en cas ou le seignour eit accroché de son tenaunt autres services qe a lui sount dues, issint qe le tenant eit aliené[4] einz ceo q'il eit[5] deschargé sa tenance,[6] en ceo cas le *contra formam feoffamenti* gist pur le tenant, pur ceo q'il est estrange et se deschargera par le *contra formam feoffamenti.* Mès ore nous sumes privé, qar[7] ceo qe nous avoms nous est descendu par aunceterie.[8] Par qei etc.

Toud. Auxi bien git le *contra formam* en l'un cas come en l'autre. (Ascuns disseint etc. etc.)[9]

{Et[10] puis a die S. Hillarii in xv. dies repetita aduocacione predicta, *Herle* pur T.: Nos auncestres seisi de la suite devant le temps limité etc. Prest del averer.

Et alii contrarium.}

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 495, Som.

Replevin action by Herbert de Mareys against Thomas de Cogan, Robert Tryvet, and Gregory Tryvet. The taking was made on [10 June, 1308] the morrow of Trinity in 1 Edw. II. in the vill of Hunespelle,[11] in a place called le Harthe; four oxen were taken; damages, a hundred shillings.

Thomas and Robert come by their attorney. Thomas answers for himself and Robert, and avows the taking, for that the plaintiff holds of him a messuage and three carucates in the vill of Hunespelle by homage, fealty, and the service of half a knight's fee, to wit twenty shillings to the King's scutage of forty shillings when it occurs, and so in proportion, and by doing suit to the avowant's court at Hunespelle from three weeks to three weeks, of which services the avowant was seised by the plaintiff's hands; and, because the suit was arrear for a year before the day of the taking, he took the beasts. (*Note continued on the opposite page.*)

[1] Et pur ceo ne vous affiez mye trop [ne vous fichez my trope *S*] de ceo qe vos auncestres furent seisiz et vous cele seisine avez continue et issi lestat vostre auncestre *L; sim. S*; affietz pas si vous eietz un tort continue *B*; car vous serrez etc. ut supra dieu defende. *Y.* [2] W. Denh' *Y.* [3] Il nest pas semblable *A, D. Q.* [4] *Ins.* avaunt *A, D, Q.* [5] soit *B.* [6] *Om.* sa tenance *B.* [7] a *B.* [8] par aultre *A, D*; nous clamoms qest par descent de heritage *B.* [9] *End with* lautre *P*; lautre; et sic pendet *A, D, Q*; Toud. Auxi bien en lun cas com en lautre etc. *L; sim. S. Place here the first sentence of the speech above ascribed to Berr., and ascribe it to Herle, B.* [10] From *Y.* [11] Mod. Huntspill.

continuing the estate of your ancestors; for, if their estate be wrongful, so is your own.

Denom. It seems to me that the *contra formam feoffamenti* properly lies in case a lord has accroached from his tenant services other than those that are due, and then the tenant alienates before he has discharged his tenancy. In that case the *contra formam feoffamenti* properly lies for the [new] tenant [*i.e.* the alienee], for he is a stranger and shall discharge himself by that writ.[1] But here we are privy, for what we have came to us by descent from our ancestors [and so we can make good our right by replevin].

Toudeby. The *contra formam* lies as well in the one case as in the other.

And so the case pends.

{And[2] afterwards on the quindene of Hilary *Herle*, after repeating the avowry for T., said: Our ancestors were seised of the suit before the time of limitation: ready to aver.

Issue joined.}

Note from the Record (*continued*).

The plaintiff says that the avowant cannot avow the taking lawful for the said suit, for one Walter de Bauton,[3] an ancestor of the avowant, gave and granted the tenements to one Geoffrey, an ancestor of the plaintiff, whose heir the plaintiff is, to hold to him and his heirs by the service of half a knight's fee for all service, by his (Walter's) charter, which the plaintiff produces and which witnesses this; and he prays judgment whether the avowant can avow the distress for the suit against the form of the feoffment made to Geoffrey, the plaintiff's ancestor.

Afterwards a day here was given on the quindene of Easter, saving to the parties their arguments (*racionibus*). Afterwards, the process having been continued to the octave of Hilary in 4 [Edw. II.], the parties came by their attorneys. And the avowant says that the plaintiff ought not to be discharged of the suit by the charter, for the ancestors of the avowant were seised of the said suit to their court for those tenements by the hands of the ancestors of the plaintiff before the first passage of Henry [III.] into Brittany; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the octave of Trinity.

[1] In the Second Inst. 118 the law is laid down in exactly the opposite sense: the *contra formam* lies only between privies.

[2] We are dependent on one manuscript for this end of the discussion; but it is borne out by the record.

[3] Or 'Banton.'

20. FOLIOT *v.* FOLIOT.[1]

Jon Jordon dona tenemenz a G. od garrantie. G. dona a A. son fiz, et a un B., vers qeus la femme Jon Jordan recovera son dower. Pus la femme fu enpledé et voucha A. et B.: qi garrantirent et voucherent meme celi A. cum heir G. A. garrantit et voucha outre le heir Jon Jordan, qar sanz voucher A., le heir n'ust pas esté vouché.

Jordan[2] dona certeynz tenemenz a un G.[3] simplement.[4] G. dona outre a Robert soun fitz et a Alice sa femme.[5] Jordan le premir donour devia. Sa femme porta bref de dower et recoverist.[6] Pus ele fist wast. Pus ele fust enpledé de ceaux tenemenz.[7] Ele voucha a garraunt R. et A. sa femme par resoun de reversioun; que entrerent en[8] la garrauntie, salve a eaux lour actioun del wast fait en mesme le temps,[9] et pus vouchent outre jointement R. fitz et heir G.[10] luy mesme par resoun de joint feffement a luy et Alice fait par G. soun piere qi heir etc.[11] Le vouché fust receu, et pus garaunti, et voucha outre William fitz et heir[12] Jordan. Et nota qe s'il n'ussent vouché en la manere, il n'ussent pas eu lour voucher outre vers les heirs Jordan.[13]

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 34, Norf.

Richard Foliot by his attorney demands against Margery, sometime wife of Jordan Foliot, the third part of four score acres of wood in Great Fransham, as his right etc.

Margery by her attorney comes, and on a former occasion she said that she held the said third part in dower by the assignment of Ralph le Mareschal and Alice his wife, and in form aforesaid she vouches them to warrant. And they now come by summons, by their attorney, and in form

[1] *Vulg.* p. 55. Text from *A*: compared with *B*, *D*, *P*, *Q*, *S*. The headnote is the statement of the case in *X*. [2] Johan Jurdan *P*; *sim. S*. [3] Geffr' *P*; *sim. B*; Geffrei *D*; Gifferay *S*. [4] *Om.* simplement *and ins.* et obliga ly et ces heirs a la garantie *P*, *S*, *B*. [5] *Om.* sa femme *and ins.* en fee simple *P*, *S*, *B*. [6] *Ins.* devers R. et Alice *B*; *sim. P*, *S*. [7] *Ins.* par un estraunge *B*; *sim. P*, *S*. [8] entre sount *A*; entre est *D*; entrerent en *B*, *P*, *S*. [9] mesme les tenemenz *D*. [10] *Ins.* qest *P*, *S*. [11] et heir qest luy mesmes come frere le feffour *B*. [12] voucha les heirs *B*. [13] si R. leust vouche come heir G. il ne eussent pas avenu a la garrantie vers les heirs Jordan etc. *B*; si R. ne li ust voche cum heir G. il ne venisent a la garantie vers les heirs Jordan *P*; *sim. S*.

20. FOLIOT *v.* FOLIOT.[1]

Husband and wife are jointly enfeoffed by the husband's father. After the father's death they, being vouched to warranty, vouch the husband as his father's heir, in order that he may then vouch the heir of the father's feoffor. A reversioner vouched to warranty by a doweress warrants with a saving clause for an action of waste which he has against her.

Jordan gave certain tenements to one G[eoffrey] simply, and bound himself and his heirs to warranty. Geoffrey gave the tenements over to [Ralph] his son and Alice [Ralph's] wife in fee simple. Jordan, the original donor, died. His wife brought a writ of dower against [Ralph and Alice] and recovered. Then she committed waste, and then she was impleaded for these tenements by a stranger. She vouched to warranty [Ralph] and Alice by reason of the reversion. They entered into the warranty with a saving of their action for the waste committed. Then they [Ralph and Alice] vouched Ralph himself by reason of the joint feoffment made to [Ralph] and Alice by Geoffrey [Ralph's] father, whose heir [Ralph] was. The vouchee was received and warranted and then vouched William, son and heir of Jordan. And note that, if their voucher had not been made in this manner,[2] they could not have got to the further voucher of Jordan's heir.

Note from the Record (*continued*).

aforesaid warrant to her. And they say that the tenements were in the seisin of one Geoffrey le Mareschal; and that he gave them to the said Ralph and Alice, to hold to them and their heirs etc., and bound himself and his heirs to warrant etc. by his charter, which they produce and which testifies this. And they vouch to warrant Ralph, son of the said Geoffrey le Mareschal. Let them have him here on the octave of Hilary by aid of Court, and be he summoned in the same county.

This seems to be the case reported above, although this entry does not show that the husband vouches over.

[1] Proper names from the record.

[2] Other books give: 'if R. had not vouched [or had vouched] himself as heir of G.'

21. ANON.[1]

Trespas, ou piert qe homme avera mye actioun de trespas sauncz assigner certein trespas, qar de comune trespasour actioun est a la coroune et en eyr est a enquere.

Un homme fust enpledé de plee[2] de trespas foundu sur statut de forstall[ours] en la Gildehalle[3] de Loundres par la cominalté de la ville. Et dissoint qe la ou toutz les citezeyns de L. vinent de[4] lour marchaundise et la ou gentz foreyns vignent ove lour marchaundises[5] a la cité, scil. ove[6] owes et gelynes etc. sauntz les queux la cité ne poet estre sustenu,[7] la est mesme cesti come[8] comune forstallere[9] de totes les choces avauntditz, issint qe[10] qaunt il les avera achaté[11] pus les vendra[12] a[13] double a tort et encountre[14] la comune ordynaunce[15] et a lour dammage etc.

Pass. pur le defendaunt. Nous entendomps qe vous n'avetz pas garr[aunt] a ceste pleint trier, qe ceo est une pleynte qe voet estre trié en eyre, et[16] auxint com laroun,[17] comoun robbour, comoun debrusour des parks, sauntz dire de certain fayt, la[18] siwte ne poet estre sauntz nomer certayn fait, qe altrement poet chescun homme avoir la siwte la quele[19] appent au Roy et est[20] de sa coroune, qe[21] ne poet estre desmenbré. Jugement, si a tiel pleynte poetz estre receu ou devetz.

Par qei fust agardé q'il ne prist rien par lour pleynte etc.[22]

22. WATEVILLE *v.* WATEVILLE.[23]

Dower ou le tenant voucha a garraunt et il countrepleda la garauntie pur ceo qe ele pout avoir doné mesme le r[espouns] : et le voucher agardé bone : et il countrepleda l'actioun le demaundaunt.

Johanne qe fust la femme Johan de Waterville porta soun bref de dower vers Curaille qe fust la femme William de Waterville, et

[1] *Vulg.* p. 55. Text from *A* : compared with *B*, *D*, *M*, *Q*, *S*. [2] enplede par bref *M*, *S* ; de pleinte *D*. [3] citee *B*. [4] par *M* ; ov *S*. [5] *Ins.* et biens *B*, *M*, *S*. [6] bestes *B*, *M*, *S*. [7] meintenu *M*. [8] *Om.* come *D*, *S*. [9] forstallour *B*, *M* ; forstallur *S*. [10] *Om.* qe *A*. [11] achace *A* ; chace par un certein *M* ; achate pur un certeyn *B* ; *sim. S*. [12] vent *B*. [13] pur le *B* ; pur *S*. [14] *Ins.* la pees et *B*. [15] encontre lordeinement *S*. [16] *Om.* et *B*, *M*, *S*. [17] estre trie en countee come laroun *D*. [18] *Ins.* quele *M* ; quel *S*. [19] fet issint qe certein chescun homme purreit avoir son swte com *M* ; *sim. S*. [20] *Ins.* un point *B*, *M*, *S*. [21] la quele chose *M*, *S* [22] agarde qe la cominalte fut en la mercy *M*, *S* ; agarde q'il ne preist rien etc. mes la cominalte de Loundres en la mercy etc. *B*. [23] Text from *A* : compared with *D*, *Q*.

21. ANON.[1]

An action of trespass by the commonalty of London against a man for being a common forestaller and so infringing a civic ordinance is dismissed. Charges of general misconduct (*e.g.* being a common thief) can only be made on the King's behalf and in the eyres.

A man was sued by the commonalty of the town of London for a trespass against the statute of forestallers [made] in the Guildhall,[2] and [the plaintiffs] said that, whereas all the citizens of London came for their merchandise and foreign folk came with their merchandise to the city, to wit, with beasts, sheep, and poultry etc., without which the city cannot be sustained, this man is a common forestaller of all the things aforesaid, so that when he has bought them for a certain sum he will sell them for double, wrongfully and against the common ordinance and to their damage etc.

Passeley for the defendant: We do not believe that you have warrant to try this plaint, for this is a matter which should be tried in the eyre, like a charge that a man is a common thief, a common robber, or a common breaker of parks, where no certain deed is laid to his charge. The suit cannot be maintained unless some certain fact be mentioned; for, were it otherwise, every man might have this suit, whereas it belongs to the King and to his crown, which is not to be dismembered. Judgment, whether you can or ought to be received to this plaint.

Therefore it was awarded that they took nothing by their plaint etc. [and that the commonalty of London be amerced].

22. WATEVILLE *v.* WATEVILLE.[3]

Tenant in dower vouches her husband's heir, who is in ward to a lord. The guardian has to warrant, notwithstanding his objection that he can give no better answer than the vouchor could have given.

[Alice], wife that was of John of Wateville, brought her writ of dower against [Torania], wife that was of William of Wateville, and

[1] This case is Fitz., *Accion sur lestatut*, 26. Record not found.

[2] See the civic ordinance in Liber Albus, i. 263.

[3] This case is Fitz., *Voucher*, 209. Fitzherbert apparently used a MS. resembling our *A*, *D*, and *Q*. Proper names from the record.

demaunda la tierce partie d'un mies etc., de quel soun baroun fust seisi et la dowa etc. Curaille voucha a garraunt Johan le fitz Johan de Waterville, qi corps et partie des teres sount en la garde la Countesse de Oxenforde. La quele fust somounse et vient en court et dit par *Herle* q'ele ne deust estre garr[auntie] par la r[esoun] q'ele pout avoir doné mesme [1] la r[espounse] qe nous poums doner et luy avoir barré de sa demande, a dire q'ele fust dowé de plus haut qe de la seisine celuy de qi dowement ele demande. Jugement, si nous la devoms garrauntir. Estre ceo, gardeyn ne deit plus avaunt garrauntir si noun des tenemenz qe luy sount escheux [2] pus la mort le tenaunt, par qi mort la garde est a luy acreu. Mès l'estat qe vous avet icy est de plus eigné temps qe [3] l'estat qe nous avoms par resoun de garde. Jugement, si vous devez estre garr[auntie].

Hervi. Si vous devietz, vostre fitz dedenz age et en la garde soun seignour, et vostre femme est enpledé de soun dower et vouche a garraunt vostre fitz, ne deit il garrauntir la femme sa [4] dower? Si fra, et nepurqaunt actioun plus tost de dower acrust [5] a la femme et de [6] eigné temps qe ne fust [7] al seignour d'avoir la garde. Auxint par de cea. Par qei nous ne veoms pas qe le vowcher [8] ne seit asset bon. Et pur ceo estoise le voucher.

Herle. Ele ne deit dower avoir, qar nous sumes dowé de plus haut et de plus eigné actioun q'ele ne demande ore dower. Jugement, si dower [9] poet ele avoir.

Et sur ceo isserent d'enparler. Et fust noun siwi [10] etc.

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 46d, Ess.

Alice de Veer, Countess of Oxford, guardian of the body and lands of John, son of John of Wateville, whom Torania, sometime wife of William of Wateville, vouched to warrant, and who in the name of the said heir warranted to her, offered herself on the fourth day by her attorney against Alice, sometime wife of John of Wateville, in a plea touching the third part of a hundred and twenty acres of land and [of] ten shillings' worth of rent in Hempstede, which Alice, sometime wife of John de Wateville, here claims

[1] mes *Q.* [2] eschieux *Q.* [3] *Ins.* ne seit *D*, *Q.* [4] soun *D*; son *Q.* [5] action de dowere acrust plus tost *Q*; *sim. D.* [6] *Om.* de *Q.* [7] fist *Q.* [8] vowche *A*; vouch' *D*, *Q.* [9] si dowere de dowere *Q.* [10] *Ins.* ideo *Q.*

demanded the third part of a messuage whereof her husband was seised and whereof he endowed her. [Torania] vouched to warranty John the son of John of Wateville, whose body and a part of whose lands are in ward to the Countess of Oxford. [The Countess] was summoned and comes into court and says by *Herle* that [the vouchor] ought not to be warranted, for she might have given the same answer that we can give and have barred [the demandant] from her demand, namely [the answer] that she was endowed higher up than the seisin of him upon whose endowment this demand is made. And [the Countess] prayed judgment whether [the vouchor] should be warranted. Besides (said *Herle*) a guardian ought not to warrant anything beyond the tenements which have fallen to him since the death of that tenant by whose death the wardship accrued. But here the estate that you [the vouchor] have is more ancient than that which we have by reason of the wardship. Judgment, whether you ought to be warranted.

Stanton, J. If you die, and your heir be within age and in ward to his lord, and your wife be impleaded in respect of her dower and vouch your son to warranty, ought he not to warrant the dower to your wife? Certainly he ought. And none the less the action to obtain dower accrued to the wife sooner and at an earlier moment than the lord's action for a wardship accrued to him. So in this case. Therefore we cannot see why the voucher is not good enough. Therefore let the voucher stand.

Herle. She ought not to have dower, for [the tenant] is endowed higher up and by virtue of a more ancient [cause of] action than that by which [the demandant] now demands her dower. Judgment, whether she can have dower.[1]

And upon this they went out to imparl. [The demandant] was nonsuited.

Note from the Record (*continued*).

as her dower. And she [Alice de Wateville] comes not, and was the demandant. Therefore it was awarded that the Countess go thence without day, and that Alice [de Wateville] and her pledges to prosecute be in mercy.

[1] Or 'whether she can have dower out of dower.

23A. ANON.[1]

Ou cely a qy la reversioun appendit dist qe l'altre fust tenaunt, n'avoit rien[2] en le fraunktenement et pria estre receu par la defaute l'altre; et fust receu, nient aresteaunt q'el fust covert de baroun.

Un homme porta un *precipe quod reddat* vers un E.[3] etc. de certeynz tenemenz. Elise fit defaute. Par qei la moité fust pris en le[4] main le Roi, et avoit jour. A quel jour ele[5] fist aultrefeez defaute.

Herle pria seisine de terre pur le demaundaunt.

A. vient en court et dit qe E.[6] n'avoit rien en ceaux tenemenz si noun a terme de vie du lees Alice[7] et qe le fee et le dreit demoert en sa persone et prie d'estre receu a defendre soun dreit.

Herle. Vous prietz d'estre receu etc. del enter, et la moité est en cas d'estre perdu. Dount voletz vous estre receu de ceo qe n'est mye en cas de estre perdu?

Hervi. Si vous fusset receu, qei dirreit vous plus q'il ne freit?

Rostone. Si froms, vouch[erioms][8] a garraunt.

Herle. Prier d'estre receu est auxi come une actioun, la quel actioun ele ne purra user qaunt a ore, pur ceo q'ele est covert de baroun, et soun baroun n'est pas[9] en court ne nomé en le prier etc. Par qei sauntz luy ne devetz estre receu.

Rostone. A.[10] n'ad rien en le franctenement qar E.[11] le[12] tient a terme de vie du lees A., et prie d'estre receu par Statut.

Et fust receu. Et voucha a garraunt. Et stetit vocatio.

23B. ANON.[13]

Entré ou femme fust receu saunz soun baroun et voucha outre sauns soun baroun.

Entré ubi uxor admissa etc. sine viro vocavit ad warantum.

Une femme purchacea tenemenz a lui et a ses heirs.[14] Pus les

[1] Text from *A*; compared with *D*, *Q*. [2] Text made doubtful by an attempt to correct it. [3] une Eliz *Q*; un Elys *D*. [4] la *D*, *Q*. [5] il *A*, *D*, *Q*. [6] Elis' *Q*; Elys *D*. [7] Avice *Q*. [8] Cy vouch' *Q*. [9] ne fust poynt *Q*. [10] Avice *Q*. [11] Elise *Q*; Eelys *D*. [12] *Om.* le *Q*. [13] *Vulg.* p. 55. Text from *M*: compared with *B*, *P*. Headnotes from *B* and *P*. [14] *Om.* a . . . heirs *B*.

23A. ANON.

In an action for land against *E*, one *A*, a married woman, intervenes and prays to be received as reversioner. She is received without her husband.

A man brought a *praecipe quod reddat* against one Elise for [a moiety of (?)] certain tenements.[1] She made default. Therefore the moiety was seised into the King's hand and a day was given to her. On that day she again made default.

Herle prayed seisin of the land for the demandant.

Then one A[lice] came into court and said that Elise had nothing in the tenements except for term of life by the lease of Alice, and that the fee and the right remained in her person; and she prayed to be received to defend her right.

Herle. You pray to be received [to defend your right] in the whole, whereas only a moiety is in danger of being lost. Do you wish then to be received for that which is not in peril?

STANTON, J. If you were received could you say anything that [the tenant] could not say?

Ruston. We might do so, for we might vouch to warranty.

Herle. The prayer to be received is like an action, and an action she [the intervener] could not at present use, for she is covered by a husband, who is not in court nor named in the prayer. Without him you ought not to be received.

Ruston. [The intervener] has nothing in the freehold, for [the tenant] holds it for term of life by [the intervener's] lease. She prays to be received by Statute.[2]

She was received. She vouched to warrant, and the voucher stood.

23B ANON.[3]

A writ of entry is brought against *A* and *B* (a married woman). Default after default was made by *A*, and *B* is received to defend for the whole, upon her allegation that *A* is tenant for life and *B* reversioner of the whole. Then *B* vouches without her husband.

A woman purchased tenements to herself and her heirs. Then

[1] But see the following report (23B). An unsuccessful attempt to simplify the facts has apparently been made.

[2] Stat. Westm. II. c. 3.

[3] Notwithstanding differences, this and the preceding report seem to tell of the same case. Neither is very intelligible. See the following note from the record.

lessa a Johan a terme de sa vie. Pus fut un bref d'entré porté vers Johan et la femme. Johan fit defaute.[1] Par qei le demandant pria seisine de terre en dreit de la moyté, et fut pris en la mayn le Roy. Vint la femme qe lessa avant jugement et pria qe nul defaute de Johan lui turnast en prejudice, qar Johan n'avoit en ceux tenemenz si noun fraunctenement a terme de sa vie de son lees et la reversion fut a lui, et pria estre receu etc.

Herle. Le quel priez vous d'estre receu, en dreit del entier ou de la moyté ?

Hedon.[2] Del entier.

Hert.[3] A ceo ne devez estre r[eceu] par la r[eson] qe vous n'estes mye en cas de statut fors en dreit de la moyté q'est en point d'estre perdue par la defaute Johan. L'autre moité si avez vous sauvé par vostre apparaunce, la quele n'est mye en point de perdre, et issint nent en cas etc.[4]

Hedon pria d'estre receu del entier, par la reson qe Johan fut tenant del entier de[5] la demande[6] com de franctenement de lees la femme, issint qe rien demurt en la persone la femme forsqe le dreit de la reversioun, ne ne demurra le jour etc. et ele est venu devant jugement etc.

Et fuit recepta. Et meintenant vouche ele soul a garraunt sanz son baroun, et le vouch[er] accepté de court etc.

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 474, Berk.

Cecilia, sometime wife of William Scot, aforetime in the Court of King Edward, father of the present King, at . . .[7] demanded against Robert de Batelking and Meliora his wife fourteen acres of land and two of meadow in Benham[8] Valence, and against the same Robert and Meliora a messuage and three acres of meadow in the same vill, as her right etc., so that Robert and Meliora vouched to warrant John T[erry],[9] who warranted them, and who vouched over (*ulterius*) the said Robert. And afterwards Robert made default here on the quindene of Easter in 33 Edw. I. after he had appeared in court, so that the sheriff was commanded to take the land into the King's hand and summon Robert to be here on the octave of Michaelmas then next. At that day the sheriff returned that the land was taken, and that he had [summoned Robert]. And therefore Robert had himself essoined against Cecilia *de servicio Regis* and had a day on the octave of

[1] defaute apres defaute *B*. [2] Hedon *B*, *P*; Herle *M*. [3] Herle *B*, *P*. [4] perdre nec in casu statuti *B*. [5] de *P*; et *M*. [6] *Om.* de la demande *B*. [7] The margin of the roll is damaged. [8] Mod. Beenham. [9] Supplied from a subsequent occurrence.

she leased to John for term of his life. Then a writ of entry was brought against John and her. John made default.[1] So the defendant prayed seisin of the land as regards one moiety; and it was taken into the King's hand. The woman who made the lease came before judgment and prayed that no default by John might turn to her prejudice, since John had in these tenements only the freehold for term of his life by her lease and the reversion was in her; and she prayed to be received.

Herle. Is it in respect of the half or in respect of the whole that you pray to be received?

Hedon. The whole.

Herle.[2] To that you ought not to be received, for you are not in the statutory case except in respect of the moiety which is in peril of being lost by John's default. The other moiety you have saved by your appearance, and it is not in peril. So you are not within the Statute.[3]

Hedon. We pray to be received for the whole, for John was tenant of the whole of what is demanded, having freehold by our lease, so that nothing remains or on the day [of writ purchased] remained in our person, except the right of the reversion. And we have come before judgment.

She was received. And now as sole and without her husband she vouches to warranty, and the voucher is accepted by the Court.

Note from the Record (*continued*).

Hilary then next. At that day Robert [did not come], and thereupon came Meliora his wife and said that she was jointly enfeoffed with him, to hold to them and her heirs, and she produced a charter made to them under the name of the said John Terry which witnessed this; and she prayed that by reason of her husband's default she might not lose her right when she was ready to answer in respect thereof; and she prayed to be received. And she was received. And she vouched to warrant John son of William Terry of Westhenneye,[4] so that the sheriff was commanded to summon him for the octave of Trinity in 34 Edw. I. At that day John had himself essoined and had a day on the morrow of All Souls then next, and the same day was given to Meliora. At that day John made default, so the *cape ad valenciam* was awarded, and he was to be summoned for the quindene of Easter in 35 Edw. I., and the same day was given to Cecilia. At that day the parties came and likewise John, and he warranted the tenements to Meliora, and

[1] Or 'default after default.'
[2] Or perhaps Hartlepool.
[3] Stat. Westm. II. c. 3, which provides in general terms for the reception of the reversioner.
[4] Mod. West Hanney.

Note from the Record (*continued*).

vouched over (*ulterius*) Robert Batelking, who was to be summoned in the same county; and the sheriff was commanded to summon him for the octave of Michaelmas then next. And afterwards the said suit was resummoned by reason of the King's death, and the process was continued until this day, to wit the morrow of Martinmas.

And now come Cecilia, by John de Bradeleye her attorney, and the said John [Terry], by Thomas de Morton his attorney; and the said Robert [Batelking] by John de Fallele, his attorney, warrants to him [John Terry]. And Cecilia demands against him fourteen acres of land and two of meadow in Benham Valence as her right of the gift of William le Scot, who thereof enfeoffed her, and into which Robert and Meliora have no entry save after (*post*) the demise which the said William, sometime Cecilia's husband (whom in his lifetime she could not contradict), made: this by one writ; and also Cecilia demands against him (Robert) one messuage and three acres of meadow in the same vill as her right and marriage-portion, and into which Robert and Meliora have no entry save after (*post*) the demise which William, sometime Cecilia's husband (whom in his lifetime she could not contradict), made to William de Monte Ryvell. (*Note continued on the opposite page.*)

24. ANON.[1]

Annuité, ou il chalaunge le fait qar le fait supose q'il fust fait en temps d'un Roy qe fust mye adonqes.

Un annuyté fust porté vers un homme, le quel demaunda ceo q'il avoyt del annuyté etc. L'autre mist avaunt soun fait qe testmoigna l'annuyté etc., et la date du fait voleit sic:[2] data apud Londoniam in festo decolacionis etc.[3] anno regni Regis Edwardi xxxv°.[4]

Herle. Jugement si par cel fait devoms estre lié, qar le fait veot fait[5] in festo decollacionis etc. anno predicto, et cel an[6] n'avoit il nul tiel fest[7] etc. Jugement etc. Qar a cest fest etc. mesme cesti Roy fust mort. Jugement.

Hedon. Voider le fait a[8] ceo ne devet ore estre receu, que altrefetz nous portames bref devers vous et demaundastes ceo qe nous avoms del annuyté, et nous meismes avaunt fait et vous botastes avaunt une quiteclamaunce.[9] Jugement, si ore pusset voider ceo qe vous avet accepté pur bon.

[1] Text from *A*: compared with *D*, *Q*. [2] *Om.* sic *D*, *Q*. [3] decoll. S. Johannis Baptiste *Q*; *sim. D*. [4] E. fil. Reg. H. xxv°. *Q*; E. fil. R. H. xxxv°. *D*. [5] qar si le fait fut fait *D*. [6] et ceo fait *Q*. [7] an *Q*; fait *D*. [8] voida le fait et dit a *Q*; voida le fait a *D*. [9] acquit' *Q*; acquitance *D*.

Note from the Record (*continued*).

And Robert comes and, after formal defence, says that Cecilia can exact nothing in those tenements [as the right of the said Cecilia],[1] for she had nothing therein, save as wife of William Scot; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for three weeks from Easter.

At first sight this recorded case looks exceedingly unlike the case or cases that have just been reported. Nevertheless, it will be observed that in Michaelmas term, 3 Edw. II., no question would arise about receipt or warranty. The Court, however, had before it an action against husband and wife, in which, on the husband's default, the wife had been received to defend for the whole, and had vouched a warrantor, who had vouched the husband. It does not seem impossible that this unusual state of affairs gave rise to some discussion of which fragments, distorted by efforts after simplification, survive in our two reports. Alike in the reports and the record we see a married woman vouching as if she were sole, and Herle's objection that the woman was not to be 'received for the whole' since, owing to her appearance, only a moiety was in danger of being lost, is an objection that might have been made against Meliora's application.

24. ANON.[2]

Qu. whether a deed is void because it bears an impossible date, and whether exception to it on this ground can be taken by one who in a previous action pleaded a quitclaim.

A writ of annuity was brought against a man. He demanded what [the plaintiff] could show for the annuity. [The plaintiff] produced a deed which witnessed the annuity etc., and the date ran thus: 'given at London on the feast of the Decollation of St. John Baptist in the thirty-fifth year of the reign of King Edward.'

Herle. Judgment, whether we ought to be bound by this deed; for it says 'on the feast of the Decollation' in the year aforesaid, and in that year there was no such feast, for before that feast the King was dead.[3] Judgment etc.

Hedon. You cannot now be received to avoid the deed by that plea, for on another occasion we brought a writ against you, and you demanded what we had to show the annuity, and we put forward [this] deed, and you produced a quitclaim. Judgment, whether now you can avoid a deed which you have accepted as good.

[1] Interlined.

[2] See the note at the end of the next case.

[3] Edward I. died on July 7 in the thirty-fifth year of his reign. The Decollation of St. John falls on August 29.

Pass. Conusset le fait et pus demoret en jugement en dreit de ceo point, qar tot[1] fust ceo point qe l'escrit etc., et[2] trové fust qe ceo fust vostre fait, vous r[espoundriez][3]: dount semble il q'il ne toud ne doune.

Et sic pendet.

25. HENKESTON *v.* GOSFELD.[4]

Annuité porté par enfaunt deinz age ou le fait fust condicionel taunt q'il fust avauncé; ou piert qe sauncz ceo q'il moustre covenable avauncement a terme de vie et par ly, le pleintif recovera.

Un enfaunt dedeinz age porta bref de anuyté vers un P. et demaunda xx. marks, qe arere lui furent d'une annuele rente de v. mars par an, et mist avaunt fait qe ceo testmoigne.

Hedon. Nous vous dioms qe le fait est condicionel, le[5] quel houre q'il soit avauncé a benefitz de saint eglise qe l'annuyté se esteindera.[6] Et nous vous dioms qe nous avoms trové l'enfaunt a l'escole et li avoms baillé en la semeigne vj. d. Jugement, si actioun poet il avoir.

Hervi. L'annuyté amounte a v. marks, et vous dites qe vous lui avet doné chescun semeigne vj. d., et ceo amount a xx. et vj. s.[7] par an. Dount si vous voletz esteindre l'annuyté par aschun enchesoun, il covent assigner qe cele benefitz amounte a taunt qe[8] l'annuyté ou plus, et ceo duraunt a terme de vie. Et purceo qe ceo qe vous lui avet doné en le semeigne si n'ad il forsqe a volunté, par qei ceo n'est pas r[espounse].

Hedon. Sire, vj. d. ad il en le semeigne, et de ceo il se agrea.

Scrop. Coment ceo[9] poet il agreer? N'est il denz age?

Hedon. Sire, nous vous dioms qe par nostre procurement si est il avauncé al benefitz[10] de saint eglise, la quel benefitz il poet prendre a tot sa vie si ceo ne soit par nounableté[11] de sa persone demene. Jugement, si actioun etc.

Toud. Quel benefitz est ceo?

Hedon. Un ewe benet.[12]

Hervi. Tot eit il ewe benete[13] de vostre doun, il covent qe vous

[1] *Ins.* ne *D.* [2] qar tust ne fust ceste p[arole?] en lescrist et *Q.* [3] nous *or* vous r' *A*; vous r' *Q*; vous resp' *D.* [4] Text from *A*: compared with *D*, *Q*. [5] qe *D*, *Q*. [6] estendreit *Q*. [7] xxiiij. soutz *Q*; xx. s. *D*. [8] come *D*. [9] se *D*, *Q*. [10] a benefice *D*. [11] noun habilite *Q*; noun ableteе *D*. [12] Un eawe benette *Q*; une eawe bente *D*. In the margin 'a holy water clerk' (hand of cent. xvi.) *D*. [13] bon et *A*; ewe benette *Q*.

Passeley. Confess the deed and then demur in judgment concerning this point, for although these words were not in the writing and it were found that this was your deed, you would still have to answer, for it seems that [the wrong date in the deed] neither gives nor takes away.[1]

The case pends.

25. HENKESTON *v.* GOSFELD.[2]

A deed grants an annuity to an infant until he shall be advanced to an ecclesiastical benefice. A benefice for life of reasonable value, regard being had to the amount of the annuity, is intended.

An infant within age brought a writ of annuity against one P. and demanded twenty marks which were arrear of an annual rent of five marks, and he put forward a deed which witnessed this.

Hedon. We tell you that the deed is conditional; for the annuity is to be extinguished whensoever [the plaintiff] be advanced to a benefice of holy church. And we tell you that we have found this child at school and have given him six pence a week. Judgment, whether he can have action.

Stanton, J. The annuity amounts to five marks [£3 6*s.* 8*d.*] and you say that you have given him six pence a week, which comes to twenty-six shillings a year. If you wish to extinguish the annuity, you must assign a benefice amounting at least to the value of the annuity and one that endures for life. And what you gave him weekly he had only at will. So that is no answer.

Hedon. Six pence a week has he had, and to that he agreed.

Scrope, J. How could he agree to that? Is not he under age?

Hedon. Sir, we tell you that by our procurement he is advanced to a benefice of holy church, which he may take for his whole life, unless he become personally disabled. Judgment, whether he can have this action.

Toudeby. What benefice is that?

Hedon. [Carrier of] holy water.[3]

Stanton, J. Even if he has the holy water by your gift, you

[1] To say that something 'ne toud ne doune' is equivalent to saying that it has no effect. There is, it will be seen, some obscurity in the preceding sentence. The point seems to be that the dating clause is surplusage.

[2] For the record see below.

[3] As to this office, see the English authorities in Du Cange, s. v. *Aqua benedicta.* At all events in some cases, the choice of a clerk for this purpose rested with the parishioners.

moustretz par tittle qe vous luy poetz estat fair a terme de vie. Mès jeo entenk q'il est remuable a la volunté les parochiens. Par qei ceo n'est mye renable[1] ne covenable avauncement[2] pur esteyndre l'annuyté.[3] Et pur ceo qe vous avetz conu qe l'annuyté est vostre fait, et vous ne moustrez rien a esteindre l'annuyté sy noun ewe benet, et ceo n'est pas covenable benefice pur esteyndre l'annuyté de v. marks et n'est pas real com a terme de vie,[4] par qei agarde ceste curt q'il recovere l'annuyté[5] etc.

Note from the Record.

De Banco Roll, Michaelmas, Edw. II. (No. 179), r. 129, Camb.

Master Richard de Gosfeld, parson of the church of Pampesworthe, was summoned to answer Giles de Henkeston[6] in a plea that he render a hundred shillings which are arrear of an annuity of five marks. The count says that on [16 July, 1307[7]] Sunday next before St. Margaret in 35 Edw. I. the defendant by his writing confessed himself held and bound to the plaintiff, for his service, in the said annuity payable during the defendant's lifetime at Michaelmas and Easter; and that the plaintiff was seised thereof by the hand of the defendant until a year and a half before the purchase of the writ; and that the defendant subtracted the annuity and refused to pay it. The writing is produced, and damages are laid at ten pounds.

The defendant confesses the writing, but says that by virtue thereof the plaintiff can claim naught in the said annuity, for on [29 August] the Decollation of St. John next following, the plaintiff by his writing granted and promised that from such time as his brother John, a clerk, should be promoted to a competent promotion (*promocionem sibi competentem*) by the defendant or at his procurement, he [the plaintiff] would remit the 'pension' in which the defendant was bound to him and renounce all right thereto, and further that if John should by any defect of his own be repelled from the said promotion, then also the pension should thenceforward be remitted for ever and the said writing obligatory should be null. The defendant produces this writing, and adds that after the making thereof he conferred upon John, then twelve years old, a promotion competent for him, namely, the office of bearing the holy water within the parish of the defendant's church of Pampesworthe, which office, as in (*ut in*) garbs[8] and other certain profits, is worth forty shillings a year; and that John was

[1] real *Q*; resnable *D*. [2] covenable sil ne eust plus *Q*. [3] *Om. to after next* esteyndre lannuyte *Q*. [4] *Ins.* et celuy qe voet esteyndre annuyte il covent qe la benefice amounte a taunt com lannuyte et ceo a terme de vie *Q*; *sim. D*. [5] *Ins.* et alius in misericordia *Q*. [6] Mod. Pampisford and Hinxton. [7] Perhaps this is meant, but see below. [8] Handfuls of corn given by the parishioners. We might render *ut in* by 'what with.'

must show some title enabling you to grant him an estate for life. But I understand that he is removable at the will of the parishioners. This is not a reasonable or proper advancement for the purpose of extinguishing an annuity. And since you have confessed the annuity to be your deed, and you show nothing to extinguish the annuity save holy water, and that [office] is not a proper benefice for the extinction of an annuity of five marks and is not 'real' as for term of life,[1] therefore this Court awards that the plaintiff recover the annuity etc.

Note from the Record (*continued*).

admitted by him thereto and was seised for half a year, until by the plaintiff's procurement he resigned the office. The defendant demands judgment.

The plaintiff says that he ought not to be repelled from action, for the said office was not a competent promotion for John, especially (*maxime*) as the annuity of five marks greatly exceeds the annual value of the office, and also John when admitted thereto was (as the defendant expressly confesses) under age; and he demands judgment.

After an adjournment to the morrow of Martinmas, judgment is given:— For that the defendant confesses the writing to be his deed, and the promotion which, as he asserts, he conferred upon John is not a competent promotion for John for the extinguishment of the annuity, since the promotion is not in anything certain ('non est in aliquo certo etc.'), and the annuity greatly exceeds the annual value of the said office, therefore it is awarded that the plaintiff recover the annuity and the arrears of a hundred shillings before the purchase of the writ, and likewise a hundred shillings for the arrears after the purchase, to wit, 29 September, 1308, and his damages, which are taxed by the justices at twenty shillings; and that the defendant be in mercy.

It will be observed that the reporter has simplified the facts by supposing that the infant was the grantee of the annuity and the plaintiff in the action. And turning back to Case 24, which in the manuscripts immediately precedes Case 25, we see that the objection founded on an impossible date was one that might have been taken in the action here recorded. Also the feast of the Decollation of St. John in 35 Edward I. is mentioned in both the report and the record, though not in precisely the same context. Edward I. died on 7 July in the thirty-fifth year of his reign. St. Margaret falls on 20 July and the Decollation on 29 August. The amount of arrears claimed and recovered suggests that the regnal year was wrongly stated.

[1] Some add 'and to extinguish the annuity there must be a benefice of equal value, and that too for life.'

26. SERIAUNT *v.* YONGE.[1]

Cui in vita, ou il demaunda terre: l'altre dit qe altre fust tenaunt de un acre de pré apurtenaunt etc. et fust mye receu pur ceo est com gros.

Une femme porta le *cui in vita* vers un tenaunt.[2] Le quel dit par *King*.[3] q'il ne fust pas tenaunt de sa demaunde. Jugement du bref, qar la ou il demaunde un mees et une vergé de terre ove les apurtenaunces, nous vous dioms[4] qe un G. tient vj.[5] acres de pree appurtenauntz a la vergé de[6] terre. Jugement *ut prius*.

Rouston.[7] Nostre demande est un mees et une vergé de terre, et la excepcioun qe vous donez est de pree qe n'est mye en demaunde. Jugement, si vous poetz nountenure alegger de choce qe n'est mye en demaunde.

Kyng.[8] Nous avoms vewe qe un homme ad demaundé une vergé de terre et recoverast, et si ad il recoveri boys, prié, more, qe amounte a ij. acres de terre, et ceo par cele parole 'apurtenaunces.' Par qei s'il[9] recoveri vers nous[10] cele vergé de terre ove les apurtenaunces q'est en demaunde, il recovereit vj. acres de pree devers nous dount nous[11] ne sumes pas tenaunt.

Hervi.[12] A une vergé de terre n'avet veu si graunt choce estre apurtenaunt,[13] qar homme recovere sovent une carué de terre et si ad il recoveri ij. acres de more et de pasture par cele paroule 'apurtenaunt.'

Herle. Si jeo demaunde un manier devers vous et vous dites q'un tiel est seisi del avoweson, n'est ceo nountenure et[14] receivable. Auxint par de cea.[15]

Hervi. Ceo n'est mye semblable,[16] qar en ceo cas l'avoweson est apurtenaunt du[17] manier. Issint n'est pas le pree apurtenaunt a la terre, qar le pree est un gros par luy mesme,[18] et vostre enroullement

[1] *Vulg.* p. 57. Text from *A*: compared with *D*, *Q* (resembling *A*) and a different version in *B*, *M*, *P*, *S*. [2] vers un W. et demanda un mies et ij. acres de terre *M*; *sim. B*, *P*, *S*. [3] Wilb. *M*; Will. *B*; William *P*; Willuby *S*; le quel dit par S. de Kyngestone *D*. [4] Begin speech here *B*, *M*, *P*, *S*. [5] v, vij, viij. *Al. Cod.* [6] au mies et terre *M*; *sim. P*, *S*; v. boves etc. a la terre etc. *B*. [7] La femme dit *M*, *P*, *S*; Launf. *B*. [8] *Om.* this speech *B*, *M*, *P*, *S*. [9] qei il *Q*. [10] vous *Q*. [11] vers vous deux queux nous *Q*. [12] *Om.* this speech *B*, *M*, *P*, *S*. [13] graunt chose appurtenaunt com boys, moleyn, pree, mes au manere ou a carue de terre et si put ceo estre bien appurtenaunt *Q*; *sim. D*. [14] *Om.* et *D*. [15] avoweson del eglise etc. ou de molyn le bref se abatereit *M*; *sim. B*, *P*, *S*. [16] merveille *B*. [17] au *D*, *Q*. [18] terre qe chescun est un gros par sey *M and end speech. Sim. B*, *P*, *S*.

26. SERIAUNT *v.* YONGE.[1]

Six acres of meadow cannot be appurtenant to a virgate of land. *Semble* small quantities of moor and pasture have been treated as appurtenances of a carucate of land.

A woman brought the *cui in vita* against a tenant. For the tenant *Kingeshemede* said that he was not tenant to her demand; and he prayed judgment of the writ, for whereas the demand is for a messuage and a virgate of land with the appurtenances, one G. holds six[2] acres of meadow appurtenant to the virgate of land. Judgment.

Ruston. Our demand is for a messuage and a virgate of land, and the plea that you put forward concerns meadow which is not in demand. Judgment, whether you can allege nontenure of a thing that is not in demand.

Kingeshemede. We have seen a man demand a virgate of land and recover, and thereby he recovered wood, meadow and moor amounting to two acres of land, and this by the word 'appurtenances.' So if he recovered against us the virgate of land which is in demand with the appurtenances, he would recover against us six acres of meadow whereof we are not tenant.

Stanton, J. Often a man recovers a carucate of land and thereby recovers a couple of acres of moor or pasture under the word 'appurtenances'; but to a virgate of land you never saw so great a matter [as six acres of meadow] appurtenant.[3]

Herle. If I demand against you a manor, and you say that such an one is seised of the advowson or of a mill, is not that a receivable plea of nontenure? So here.

Stanton, J. That is not a similar case, for in that case the advowson is appurtenant to the manor. But meadow is not appurtenant to land, for it is a thing by itself, and the enrolment in your

[1] This case is Fitz., *Briefe*, 783. Proper names from the record.

[2] Other small quantities are mentioned.

[3] One book says that so great a thing as a wood, mill, or meadow may be appurtenant to a manor or carucate, but not to a virgate.

serra 'de terra petita talis tenet tantum.' Mès si vous joyndre voderetz[1] au pree un acre de terre a dire et qe un tiel joynture.[2] Par qei nous le vous dioms qe vous responetz.

{*Ber.*[3] *ad idem.* Nous ne trovoms nul bref en la chauncellerie qe dit vj. acres de terre forpris vij.[4] acres de pré etc. qe chescun forpris serra de mesme la chose q'est l'enter.[5] Et pur ceo responez outre.}

King. La ou il ad supposé qe ceo est le dreit la[6] femme, nent le dreit etc. einz le dreit le baroun. Prest etc.

Et alii econtra.

{En[7] *cui in vita* d'un mès et une carué de terre, *Wilb.* Un A. tent vij. acres de pré apurtenant a mesme le mès et terre: nent nomé etc.

Ber. Home ne put pas forprendre pré de terre. Pas qei r[espone]z.

Set *Herle* dixit qe carué poet comprendre bois et pré ausi ben com terre.}

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 102, Salop.

The record corresponding to this report may well be the following, though naturally it says nothing of the abortive attempt to plead non-tenure.

Hawisia, wife that was of Richard, son of Richard le Seriaunt de Weston super Lullingefelde, by her attorney, demands against William le Yonge of Schrewarthyn two messuages and a virgate of land in Weston super Lullingefelde as her right by the gift of Richard le Seriaunt, who thereof

27. ANON.[8]

Entré, ou le bref fust agardé bon.

Un bref d'entré fust porté vers un homme et le bref voleit 'Precipe A. quod reddat B. terciam partem unius mesuagii, ij. acrarum terre, unius acre prati, cum pertinenciis etc. quas clamat esse ius etc. et in que idem B. non habet ingressum etc.'

Lauf. Jugement du bref, qar la demaunde est la tierce partie

[1] vodrietz joindre *D.* [2] a dire qe un tiel noun tenure *Q*; dire et qe un tiel nountenure *D.* [3] Not in *A*, *D*, *Q*. From *M*; *sim. B*, *P*, *S*. [4] vj. *B*; un acre *S*. [5] qe la forprise covyent estre de chose q'est lent' *B*. [6] sa *A*, *Q*; la *Conj*. [7] From *X*. [8] Text from *A*: compared with *D*, *Q*. Note from *Q*.

case should be: 'of the land demanded such an one holds so much.'[1] So we bid you answer.

{Bereford, C. J.[2] to the same effect. We find no writ in the Chancery saying 'so many acres of land except so many acres of meadow,' for every exception must be of the same kind as is the entire thing from which it is an exception. Therefore answer over.}

Kingeshemede. Whereas he has supposed that this was the right of the wife, we are ready to aver that it was not her right, but the right of the husband.

Issue joined.

{In[3] a *cui in vita* for a messuage and a carucate of land *Willoughby* said that one A., not named in the writ, holds seven acres of meadow appurtenant to the messuage and carucate.

Bereford, C. J. You cannot except meadow from land. So answer.

But *Herle* said that a carucate may comprise wood and meadow as well as land.}

Note from the Record (*continued*).

enfeoffed her and the said Richard, sometime her husband, and into which William has no entry save by Richard, sometime her husband, whom in his lifetime she could not contradict.

William, by his attorney, after formal defence, says that she can claim no right in the tenements, for they were the right of Richard, sometime her husband, so that she had nothing in them save as his wife; and of this he [William] puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the quindene of Hilary.

27. ANON.[4]

A writ upheld against grammatical objections.

A writ of entry was brought against a man and said: 'Command A. to render to B. the third part of a messuage, of two acres of land and of one acre of meadow with the appurtenances etc., which (*quas*) he [A.] claims as his right etc., and into which (*que*) the said B. has no entry etc.'

Laufer. Judgment of the writ: for the demand is for the third

[1] An apparently mutilated sentence follows in some books.
[2] This is not in all of our books.
[3] A compressed report.
[4] Record not found.

d'un mies, ij acres de terre, un acre de pree, et soun bref dit *in que idem B. non habet ingressum* en supposaunt le *que* avoir relacioun al mees enter et al pree [1] et nient a la tierce com il suppose devaunt, issint qe soun bref n'est mye pursuaunt en luy mesme. Jugement etc. qar il dust estre 'in quas.'

Hervi. Nous vous dioms qu'ele [2] pout avoir relacioun auxint bien al mies et au pree com a la terre ou acre [3] ou au terce partie du mies ou de terre. Et purceo nous n'abateroms mye le bref pur si petit. Purceo [4] nous dioms qe le bref est asset bon etc.

28. SCARDEBURGH *v.* ULRAM.[5]

Replegiari, ou l'avouwerie fut pur damage fessant, et l'autre dit qe pur damage ne put il avowerie faire, qar il dit qe ceo fut sa comune.

Un A. porta bref vers B. de ses averes a tort pris.

Roustoun. Nous avowoms la prise de xl. berbiz etc. par la resoun de sa seignurie, et pur ceo q'il trove illeoqes les berbys, si les prist il com en soun severale damage fesaunt.

Hedon. Par taunt ne poetz,[6] qar nous vous dioms qe nous tenoms en mesme la ville une carué [7] de terre en demene et en service, par quele terre nous et nos auncestres devaunt nous avoms eu agistement de temps etc. Jugement, si vous en cele tere agistement poetz clamer ou pur damage fesaunt en vostre several avower etc.

Roystoun.[8] Et nous jugement, depuis qe vous ne poet dedire qe nous ne sumes seignour de la ville de L., par resoun de quel seignourie nous avoms l'agistement, et vous clamet agistement qe naturelement apent a la seignurie, la quele seignurie ne passe [9] mye par carué de terre ne par bovez, einz par terce partie ou [10] quarte partie ou par moyté du manier. Jugement, si vous par resoun de cele tenaunce poetz agistement clamer.

Hedon. Sire, oyl.

Scrop. Donqe il semble qu'il est seignour.

Roustoun. Le manier de L. fust en ascun temps en la seisin

[1] *Om.* et soun bref . . . pree *A*, *D*; *supplied from Q.* [2] Hervy. Le que *Q*; dioms que le que *D.* [3] ou a acre *D.* [4] *Ins.* qe *D*, *Q.* [5] Text from *A*: compared with *D*, *Q.* Headnote from *D.* [6] *Ins.* avower *D.* [7] acre *D.* [8] Roystoun *Q.* Hedon *A*, *D.* [9] nest passe *Q.* [10] ou *D*, *Q*; en *A.*

part of a messuage, and [of] two acres of land and [of] one acre of meadow, and his writ says, 'into which (*que*) the said B. has no entry,' thus supposing that he refers to the whole messuage and to the meadow and not to the third part as he originally supposed, so that his writ is inconsistent with itself. Judgment, for he should have said 'in quas.'

Stanton, J. We tell you that the word 'que' [i.e. *quae*, acc. plur. neut.] can have relation to 'mesuagium' and 'pratum' as well as to 'terra' and 'acra,' or to 'tertia pars mesuagii et terre.'[1] And therefore we will not abate the writ for so small a matter, but tell you that the writ is good enough.

28. SCARDEBURGH *v.* ULRAM.[2]

Semble that a man may claim as appurtenant to a carucate a prescriptive right to the 'agistment' of beasts on certain land in the same vill, of which land he is neither lord nor tenant.

One A. brought a writ against B. for his beasts wrongfully taken.

Ruston. We avow the taking of forty sheep by reason of our seignory, and because we found them there we took the sheep as doing damage in our several.

Hedon. That you cannot do, for we say that in the same town we hold a carucate of land in demesne and in service, by reason of which land we and our ancestors before us have had agistment from time [beyond memory]. Judgment, whether you can claim agistment in this land or avow as for damage feasant in your several.

Ruston. And we likewise pray judgment, since you cannot deny that we are lord of the vill of L., and by reason of our seignory we have the agistment, and you claim the agistment which naturally belongs to the seignory; and a seignory is not conveyed by way of carucates or bovates of land, but [when it is divided] is the seignory of a fourth or a third or a half of a manor.[3] Judgment, whether you can claim agistment by reason of your tenancy.

Hedon. Yes [we can], Sir.

Scrope, J. Then it seems that you are lord.

Ruston. The manor of L. was heretofore in the seisin of William

[1] This sentence would be more intelligible if it told us that the *in quae* might cover not only neuter but feminine nouns; and that seems to be what is really meant.

[2] Proper names from the record.

[3] The record throws some light upon an argument that is not very lucidly reported.

W.[1] de Forte Counte de Aumarle [2] qe enfeoffa de cele carué de terre W. de Fauconberge, a tenir de luy mesme, par my qei vous estes entré. Et puis W. de F.[3] enfeffa nostre auncestre du remenaunt du manier ensemblement ove la seignurie. Par qei nous et nos auncestres de tot temps [4] avoms eu l'agistement. Prest etc. Estre ceo, si vous rien avietz ceo [5] fust com nostre miere fust covert de baroun. Prest etc.

Hedoun. Qe nous avoms eu agistement come de toutz tenauntz qe cele [6] tienderent de temps etc. sauntz interrupcioun. Prest etc.[7]

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 198, York

Replevin by William de Scardeburgh de Ulram against John de Ulram. The defendant, with three other named persons, on [2 Aug. 1308] Friday next after St. Peter at Chains in 2 Edw. II., took a hundred and nineteen sheep in the vill of Ulram,[8] in a place called Holmcop. Damages are laid at ten pounds.

The defendant avows the taking of forty sheep, for he says that he is lord of the vill of Ulram, and by reason of his lordship (*dominii*) the agistments of beasts to be depastured in the common of the vill belong to him; and that he found the forty sheep agisted in the common by the plaintiff, to whom it was not allowable (*cui non licebat*) to put or agist beasts in the same without the licence of the defendant.

The plaintiff says that the defendant cannot avow the taking by reason of lordship; for he says that the lordship of the said vill is divided from a certain place which extends itself towards the west on the one part as far as the Westend and on the other part towards the east as far as the Eastend of the said vill ('dominium predicte ville divisum est a certo loco qui se extendit versus occidentem ex una parte usque in le Westhende et ex alia parte versus orientem usque in le Est Ende ville predicte etc.') [9]; and that the lordship of agisting beasts (*dominium agistandi averia*) in the common of pasture in the Westend as much (*tam*) belongs to the plaintiff as (*quam*) to the defendant; and that of having this agistment the plaintiff and his

29. MOUNTENY *v.* PEYTON.[10]

Eschete porté vers ij. joyntement: ou piert s'il pusset averer la tenance several le bref abatera saunz moustrer cumbien chescun teint.

Bref d'eschete fust porté vers ij. tenauntz en comune.

[1] Will. *D.* [2] Aumaylle *Q.* [3] Fort' *Q*; Forte *D.* [4] du temps *Q.* [5] si *Q.* [6] *Ins.* terre *Q.* [7] *Ins.* Et alii econtra *Q.* [8] Mod. Ulrome, near Skipsea. [9] The East End and West End are marked on maps that are not of a large scale. [10] Text from *A*: compared with *D*, *Q*.

de Forz, Earl of Albemarle, and of this carucate of land he enfeoffed W. de Fauconberge (through whom you entered) to hold of himself. And then William de Forz enfeoffed our ancestor of the residue of the manor, together with the seignory. Therefore we and our ancestors have always had the agistment. Ready etc. Moreover, if ever you had [the agistment], that was while our mother was covered by a husband.

Hedon. Ready to aver that without interruption we, and all those who held [the said carucate], have had the agistment from time [before memory].

Note from the Record (*continued*).

ancestors from time immemorial have been seised, along with the defendant and his ancestors and the others who held the land which the defendant now holds in the vill; and that since the defendant had put forty agisted sheep in the said common of the Westend (whereof the place where the taking was made is parcel) the plaintiff put other forty sheep agisted by him in the said common, as well he might; this he is ready to aver.

The defendant says that William de Fortibus, sometime Earl of Albemarle, was seised of the manor of the vill of Ulram and by reason of the said manor had the entire lordship of agisting beasts everywhere in the vill; and of the tenements which the plaintiff holds he [the Earl] enfeoffed one William de Faucunberge,[1] whose estate the plaintiff has, reserving to himself the lordship with all franchises etc. ('reservato sibi dominio cum omnibus libertatibus etc.'); and afterwards the Earl enfeoffed a certain ancestor[2] of the defendant of the residue of the manor with the lordship and franchises etc.; and this ancestor of the defendant[3] by reason of his lordship had the agistments of beasts in the vill, and likewise the defendant always hitherto continued this estate of the lordship, without this (*absque hoc*) that the plaintiff or his ancestors had any lordship of agisting any beasts in the common of the vill as the plaintiff asserts; and of this the defendant puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the morrow of Candlemas.

29. MOUNTENY *v.* PEYTON.[4]

A writ for land against two as tenants in common can be abated by the averment that they hold in severalty. *Qu.* whether they need say how much each of them holds.

A writ of escheat was brought against two tenants in common.

[1] The name interlined.

[2] *antecessorem* over an erasure that it does not nearly fill.

[3] *antecessor ipsius Johannis de Vlram* over an erasure. Seemingly the defendant's counsel withdrew a name.

[4] Proper names from the record.

Herle. La ou vous supposet qe nous tenoms joyntement, nous tenoms severalment: jugement du bref; et fesoms [1] le jour du bref purchacé. Prest etc.

Friss. Coment severalment, et com bien tient l'un et com bien l'autre, qar ceo vous covent dire si vous voletz nostre bref abatre?

Scot. Il n'est mie en ceo cas come serroit en [2] nountenure a doner certayn tenaunce, qar il sount a r[espoundre] [3] a vostre bref qe voet qe nous tenoms en comune la ou nous tenoms severalment. Jugement etc.

Herle. Pur ascerter [4] la court nous vous dioms qu'un tiel tient la moité de vostre demaunde et nous tenoms l'autre moyté et fesoms [5] le jour de bref pourchacé. Prest etc.

Et alii econtra.

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 221d, Suff.

Arnulph de Mounteny demands against John de Peyton and Robert de Bures a messuage and a carucate of land in Magna Waldingfeld by way of escheat. (It is needless to state the demandant's title.) The tenants say that they ought not to answer to this writ, for, whereas it supposes that they hold the tenements *coniunctim et pro indiviso*, they do not so hold, for John severally holds thereof the messuage and a moiety of the carucate, and

30. BULLOK *v.* CHAUMBRE.[6]

Intrusioun, ou il mist avaunt chartre qe prova ly et un altre qe fust mye nomé en bref estre joyntfeffez: le demaundaunt fust mye receu a dire q'il fust le premir qe abatist et soul tenaunt etc., mès avoyt procès de statut.

Bref de intrusion fust porté vers un P. et G. sa femme etc.

Roustoun. Nous vous dioms q'un Waulter nous enfeffa de mesme ceaux tenemenz, a nous et a nostre femme et un tiel nostre fitz, et il nient nomé en le bref. Jugement du bref. (Et mist avaunt chartre qe ceo testmoigna.)

Willibi. Nous voloms averir qe vous fustes le premir qe se abatist après la mort le tenaunt a terme de vie, par qi mort nous portoms [7] cesti bref, et fustes [8] soul tenaunt le jour du bref purchacé. Prest etc.

[1] fesames *D.* [2] *Ins.* une *D.* [3] qar il nestut a respoundre *Q.* [4] eseer *over erasure Q.* [5] fesames *D.* [6] Text from *A*: compared with *D*, *Q.* [7] portames *D*, *Q.* [8] fust *A*; fustes *Q*; futes *D.*

Herle. Whereas you suppose that we hold jointly, we hold severally, and did so on the day of writ purchased. Ready etc. Judgment of the writ.

Friskeney. How severally? How much does one of you hold and how much the other? You must say that if you would abate our writ.

Scoter. This is not like a case where nontenure is pleaded and one has to make the tenancy certain; for we have no need to answer to your writ, which says that we hold in common, whereas we hold in severalty. Judgment etc.

Herle. In order to inform the Court,[1] we say that the one holds the half of what you demand, and the other the other half; and so did they on the day of writ purchased. Ready etc. Issue joined.

Note from the Record *(continued)*.

Robert holds the other moiety of the carucate, and so they held on the day of writ purchased, namely 22 July [1306] in 34 Edw. I.; and this they are ready to aver; and they demand judgment of the writ. The demandant replies that they hold jointly and so held on the day of writ purchased, as he by his writ supposes; and he prays that this be inquired by the country. Issue is joined, and a *venire facias* is awarded for the quindene of Easter.

30. BULLOK *v.* CHAUMBRE.[2]

In abatement of a writ of intrusion the tenant pleads joint feoffment (witnessed by charter) with a person not named in the writ. *Semble* that 'you were first to intrude' would not be a good reply.

A writ of intrusion was brought against J. and L. his wife.

Ruston. We say that one Walter enfeoffed us of these tenements, [to hold to] us and our wife and such a one our son; and [our son] is not named in the writ. Judgment of the writ. (He produced a charter which witnessed this.)

Willoughby. We will aver that you were the first to abate after the death of the tenant for life upon whose death we bring this writ, and were sole tenant on the day of writ purchased. Ready etc.

[1] Or 'to ease the Court' by relieving it of the duty of deciding this question.
[2] Proper names from the record.

Rostoun. L'averement qe vous tendet si est al actioun, a qei nous ne poums estre partie sauntz nostre fitz, et il nent nomé en le bref. Jugement.

Scrop. Il dit qe vous fustes le premir qe se abatit après la mort le tenaunt a terme de vie, et vous dites qe [1] vous estes entré par title sauntz abatement faire. Par qei il semble qe vous estes a issue.

Lambert a *Rostoun.* Si vous voderez voucher Waulter, ne vous oustereit [2] mie de vostre voucher, pur ceo qe vous estes le premir etc.

Rostoun. Jeo ne r[espoundrai] jamès de sa demaunde la ou jeo ne su par tenaunt soul,[3] ne ley de terre ne me chacereit mye.

Scrop. Il [4] poet ensemble ester qe vous fustes le premir qe abatist après la mort soun tenant et pus enfeffastes Walter et repreistes estat a vous et a vostre femme et a vostre fitz. Par qei donqe ne serra il receu a dire qe vous fustes le premir q'abatist etc.? Par dieu! il vous oustereit de vostre voucher.[5] Et pur ceo en ceo cas [6] homme ne poet voucher, il avera soun bref de garrauntie de chartre.

Will. Donqe prioms nous q'il face venir son fitz a savoir moun s'il voet meyntenir la chartre de jointfeffement q'il mettent avaunt solom statut ' de coniunctim feoffatis.'

Et la court luy graunta bref a ceo fair. Ideo etc. et il suwyt vers luy etc.

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 263d, Suff.

Robert, son of Gilbert Bulloke, by his attorney, demands against John de la Chaumbre and Lora his wife a messuage, thirty-three acres of land, eight of meadow, four of pasture, one of turbary and five shillings' worth of rent in Totenham and Rishemere as his right and inheritance, and into which John and Lora have not entry except by (*per*) the intrusion which they made after the death of Leticia de Redynges, to whom Robert Fouke de Redynges, cousin of the demandant, whose heir he is, demised them for the life of Leticia, and which after her death ought to revert to him. The count lays seisin as of fee and right in Robert Fouke, and from him, because he died without [an heir of his body,] the right resorted to one Reymund as uncle and heir (brother of John, Robert's father), and from him it descended to one Gilbert as son and heir, and from him to the demandant as son and heir.

John and Lora, by their attorney, after formal defence, say that they ought not to answer him to this writ, for that they hold jointly with John

[1] *Ins.* un Wauter vous enfeffa et issint *D*, *Q*. [2] *Ins.* il *D*, *Q*. [3] *Ins.* tenant *D*. [4] *Ins.* ne *Q*. [5] *Ins.* en ceo cas *Q*. [6] *Ins.* ou *D*, *Q*.

Ruston. The averment that you tender goes [not to the writ, but] to the action, and to it we cannot be a party without our son, who is not named in the writ. Judgment.

Scrope, J. He says that you were the first to abate after the death of the tenant for life, and you say [that one Walter enfeoffed you so] that you entered by title without abatement. So it seems that you are at issue.

Trikingham, J., to *Ruston.* If you wished to vouch Walter, would not [the demandant][1] oust you from your voucher by the averment that you were the first [to abate]?

Ruston. I shall never answer to his demand where I am not sole tenant, and the law of the land will not drive me to that.

Scrope, J. The two assertions can[2] stand together—namely, that you were the first to abate after the death of his tenant [and that you hold under Walter's feoffment, for] you may have enfeoffed Walter and retaken an estate to you and your wife and your son. Why, then, should he not be received to say that you were the first to abate? By God! in such a case he would oust you from your voucher; and in such a case, therefore, a man, being unable to vouch, has his writ of *warantia cartae.*[3]

Willoughby. Then we pray that he cause his son to come and make known whether he will maintain this charter of joint-feoffment according to the Statute *de coniunctim feoffatis.*[4]

And the Court granted him a writ for this purpose. Therefore etc.; and he sued against him.

Note from the Record (*continued*).

and Walter, sons of John de la Chaumbre, who are not named in the writ; and they produce a charter under the name of one Walter de Redynges, which witnesses that he gave and by his said charter confirmed the tenements to John de la Chaumbre and Lora his wife and John and Walter their sons (*filiis suis*), to hold to them and their heirs; and they pray judgment of the writ.

The demandant says that John and Lora cannot quash his writ in this behalf by the charter, for John and Lora on the 20th of April in 2 Edw. II. when he purchased his writ against them held the tenements solely (*soli*), without this (*absque hoc*) that John's sons, John and Walter, had anything therein, no matter what the charter may witness; and this he is ready to aver. (*Note continued on next page.*)

[1] The French is ambiguous.
[2] One MS. says 'can not.'
[3] Apparently, however, the demandant's averment is not received.
[4] 34 Edw. I., giving a judicial writ against the alleged joint-tenant.

Note from the Record (*continued*).

Therefore by the Statute etc. the sheriff is commanded to do John and Walter to wit that they be here on the quindene of Easter to maintain the said exception together with [John and Lora]. The same day is given to the parties.

Afterwards on that day the demandant and John and Lora come by their attorneys, and John and Walter, sons of John de la Chaumbre, do not come; and the sheriff returns that he has done them to wit by Richard le Menel and Henry Piggel that they should be here. (*Note continued on the opposite page.*)

31A. THE KING *v.* ROS.[1]

Quare impedit: ou piert qe lees fait a cely a qy la revercioun apent a terme de vie par tenaunt par la ley d'Engleterre doune mye forfeture; ou jeo serra mye receu d'averer qe l'auncestre l'enfaunt par qy nounage le Roy cleime le presentement avoyt qe terme de vie de moun lès.

Quare impedit, ou le tenant par la ley d'Engleterre avoit soun estat lessé al dreit heir a tenir a terme de la vie le heir.

Le Roy porta soun *quare impedit* vers William de Roos de Ingmanthorpe, et dit qe a luy appent a presenter par la resoun qe William de Caunteloo[2] presenta un William soun clerk qe a soun presentacioun fust receu etc.: par le nounage William le fitz W. de Cauntele, q'est en garde le Roy, appent al Roy de presenter et[3] William de Ros[4] destorbe etc. Prest d'averer pur le Roy si le voet dedire.

Roston. William de Ros vous dit qe a luy appent etc., par la resoun qe le manier de C.[5] ensemblement ove l'avowesoun etc. furent en la seisine un Hughe de Chansi[6] et Johane sa femme, le quel H. com del dreit Johane presenta un soun clerk J. Vavasour[7] qe fust receu etc., et de H. et de J. descendy le dreit du manier ensemblement ove etc. a Waulter com a fitz et heir, de Waulter a Custance,[8] la quele fust esposé a mesme cesti William de Roos, le quel William après la mort C.,[9] par resoun del issue entre eaux, tient le manier de C.[10] ensemblement ove l'avowesoun par la ley d'Engleterre. Et pur ceo qe un Robert et Margerie sa femme après la mort J. Vavasour, par qi mort la eglise se voida, mist avaunt debat en l'avowesoun,

[1] Text from *A*: compared with *D*, *Q*. A second version follows. Headnotes from *A* and *P*. [2] Cauntelewe *Q*. [3] *Om.* le fitz . . . et *A*, *D*; *supplied from margin of Q*. [4] Caunteloo *A*; Ros *Q*. [5] Sapthop' *Q*; Chipthorp' *D*. [6] Cancy *Q*. [7] Vavachour *Q*. [8] Eustace *D*, *Q*. [9] E. *A*; Eustace *D*, *Q*. [10] S. *Q*.

Note from the Record (*continued*).

And John and Lora say that they hold jointly with John and Walter, the sons, etc. and so held on the said day and year; and of this they put themselves upon the country.

The demandant says that John and Lora hold solely and so held on the said day and year, *absque hoc* that John and Walter, the sons, had anything; and he prays that this be inquired by the country.

And John and Lora do the like. Therefore be there a jury according to the form of the Statute etc.

31A. THE KING *v.* ROS.[1]

One *C* inherited a manor and advowson, of which his stepfather *R* was tenant by the curtesy. *R* leased to *C* for *C's* life, with covenant that the tenements were to return to *R* as tenant by the curtesy if *R* outlived *C*. The church falling vacant, *C* by darein presentment recovered against disturbers. The record of the assize said nothing of *R's* rights. *C* has now died in *R's* lifetime and his heir is in ward to the King. The church falls vacant. The King is entitled to present, for it appears by record that *C* made the last presentation, and the covenant cannot be enforced against the infant.

The King brought his *quare impedit* against William de Ros of Ingmanthorpe, and said that the presentation belonged to him for that William of Cantilupe presented one Richard his clerk, who on his presentation was received etc.; and that by reason of the nonage of Cantilupe's heir, who is in ward to the King, it belongs to the King to present, and that Ros disturbs him. Ready to aver for the King if he will deny.

Ruston. William de Ros tells you that the presentation belongs to him, for that the manor of C. together with the advowson were at one time in the seisin of Hugh Fitz Ralph and Joan his wife; and Hugh, as in right of Joan, presented a clerk of his, J. Vavasour, who was received etc.; and from Hugh and Joan the right of the manor together with [the advowson] descended to Ralph as son and heir, and from Ralph to Eustacia; and Eustacia was espoused to this William de Ros; and after her death, by reason of the issue between them, William held the manor together with the advowson as tenant by the curtesy. And because one Philip and Isabel his wife, after the death of J. Vavasour whereby the church was vacant, raised debate

[1] Proper names from the record. In this report some of the names of the minor characters seem to have been strangely transposed.

William de Roos et Custance[1] sa femme de dreit C.[2] porterunt un assise de derrein present et recovererent la[3] presentement; mès, pur ceo qe le temps fust passé, l'evesqe presenta *per lapsum temporis*; et pristerent lour title del presentement H. et Johanne.[4] Et issint appent a[5] William a presenter ore cum celuy qe teint par la ley d'Engleterre.

Pass. pur le Roy. Nous vous dioms qe H. de Chaci come de soun dreit demene presenta J.,[6] dount de H. descendi le dreit del avowesoun a Walter com a fitz et heir, de Walter a Custaunce[7] com a fille, la quele fust esposé a William[8] de Caunteloo, de qui issit William. Et pur ceo qe William fust destourbé par un Robert et Margerie sa femme, William de Caunteloo com a soun dreit[9] recovera[10] le presentement, et prist soun tittle del presentement H. de Chancy. Et presenta un soun clerk, par qi mort la eglise etc. Et issint apent au Roy a presenter par le nounage W. fitz W. de Cauntelo, q'est en sa garde, et noun pas a William de Roos.

Rostoun. Sire, après la mort C.,[11] W. de Ros tient le manier de C. ensemblement ove l'avowesoun etc. par la ley d'Engleterre; le quel William lessa le manier ensemblement ove l'avowesoun a W. de C.[12] a tenir a tote sa vie, et, s'il deviast vivaunt W. de Ros, qe le manier ensemblement ove l'avowesoun tornereit a dit W. a tenir par la cortesie d'Engleterre[13] etc. com avaunt, pur certein covenaunt entre eaux fait. Donqe, quel presentement qe W. de Caunteloo avoyt, ceo avoit il de lees W. de Ros, noun pas de[14] soun dreit demene. Et ceo voleit averer.

Hervi. Purceo qe trové est par recorde qe W. de C.[15] piere l'enfaunt, qe[16] heir etc., recovera cel presentement, a qei[17] W. de Ros nul tittle demoustra, sy noun un covenaunt fait entre W. de C. piere l'enfaunt, qi heir etc., vers luy mesme, a qi cest enfaunt ne poet estre partie duraunt soun nounage, si agarde la court qe le Roy recovere[18] qaunt a ore, sauve a W. soun covenaunt[19] vers l'enfaunt qaunt il serra d'age a recoverer par my soun covenaunt, e W. en la merci pur la destourbaunce, et l'enfaunt a dieu jesqes soun age.

[1] Eustace *D*, *Q*. [2] E. *A*; Eustace *D*, *Q*. [3] le *D*, *Q*. [4] presentement Hughe Cancy *Q*; *sim. D*. [5] *Ins.* Sire *D*, *Q*. [6] *Om.* presenta J. *Q*. [7] Eustace *D*, *Q*. [8] Lucas *Q*. [9] com dreit *Q*; com son dreit *D*. [10] dereigna *Q*; desturba *D*. [11] Eustace *D*, *Q*. [12] Will. de Cantell' *Q*. [13] curtesie dengleterre *Q*. [14] Ros en noun de *Q*. [15] E. *A*; Will. de Canteloue *D*. [16] qi *D*, *Q*. [17] present' et qe *Q*; *sim. D*. [18] *Ins.* soun presentement *Q*. [19] covenenaunt *A*.

as to the advowson, William de Ros and Eustacia his wife, as in the right of Eustacia, brought an assize of last presentation and recovered the presentation, but because the time for presenting had passed, the Bishop presented as on a lapse. And [in that case William and Eustacia] took their title from the presentation of Hugh and Joan. And thus it belongs to William now to present as tenant by the curtesy.

Passeley for the King. We say that Hugh Fitz Ralph as in his own right presented J. [Vavasour]; and from Hugh the right of the advowson descended to Ralph as son and heir, and from Ralph to Eustacia as daughter, who married Nicholas de Cantilupe and from whom issued William [de Cantilupe]. And, because William [de Cantilupe] was disturbed by one Philip and Isabel his wife, he recovered the presentation in his own right, taking his title from Hugh's presentation. And he presented a clerk of his to the church, and on that clerk's death the church [now is vacant]. And thus it belongs to the King to present by reason of the nonage of William, son of William de Cantilupe, who is in [the King's] wardship, and it belongs not to William de Ros.

Ruston. Sir, after the death of Eustacia, William de Ros held the manor together with the advowson etc. by the curtesy, and he leased the manor together with the advowson to William de Cantilupe to hold for his life, and, if he died in the lifetime of William de Ros, the manor together with the advowson was to return to William [de Ros] to hold by the curtesy of England as before, according to a certain covenant made between them. Thus, whatever presentation Cantilupe had, this was, not in his own right, but by the lease of Ros. And this we are ready to aver.

Stanton, J. As it is found by record that William de Cantilupe, the father of the infant, whose heir [the infant is], recovered this presentment, and to it Ros shows no title, save a covenant made between him and the infant's father, to which matter the infant can be no party during his nonage, therefore the Court awards that the King recover his seisin on the present occasion, saving to Ros his covenant against the infant when he shall be of age to [answer to] the covenant, and that William de Ros be in mercy for the disturbance, and that the infant take farewell until his full age.

31B. THE KING *v.* ROS.[1]

Le Roy porta son *quare impedit* vers W. de Roos de Ingmanthorpe et fut le cas tiel: Les tenemenz a queux l'avowesoun fut appendaunt furent en la seisine un[2] Eustace qe se lessa esposer a un Adam. Et avoint issue un W. de E. Son pere morust. Ele prist autre baroun, un W. de Roos. Ele morust. W. de Roos tynt par la ley d'Engleterre et lessa les tenemenz a W. de E. a terme de sa vie, issint qe s'il morust avant[3] W. de Roos qe les tenemenz ove l'avowesoun retourner[eient][4] a W. de Roos a terme de sa vie a tenir en son primer estat. Duraunt le temps W. de E., la eglise se voida. W. de E. presenta et fut desturbé. Il porta le drein present, et recovera com de la seisine son auncestre,[5] sanz ceo qe rien fut parlé du lees ou par lui ou par W. de Roos, issint qe[6] par reson del nounage le fitz et heir W. de E. qe tynt en chief, le[7] Roy ad presenté.

Rust. Si nous fussoms en tenaunce et fussoms enpledé del avoweson par bref de dreit et nous priassoms eide de celui par reson de[8] nounage le Roy porte cesti bref, l'eide nous serreit granté. Et mesme celui W. de E. par qi mort et par le nounage son fitz et heir le Roy prent son title a presenter, n'avoit nul dreit a presenter vivaunt W. Roos, si noun par la reson du lès qe W. de Roos lui fit,[9] issi par sa mort W. de Roos est en son primer estat. Et demandoms jugement.

Hervi. Pur ceo qe W. de E. recovera le drein presentement et[10] auxi com del estat ses auncestres,[11] et a cele temps n'avoit nul mencioun fet du lees com avant,[12] et pur ceo qe l'enfaunt sur[13] son nounage ne peot mye estre partie a trier le covenant fet entre son pere et W. de Ros, si agarde la court qe le Roy recovere son presentement vers W. de Roos et ses damages etc., et W. de Roos eit son recoverer vers l'eir qaunt il vendra a son age.[14]

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 27, Not.

More or less correct copies of this record are found in some of the manuscript Year Books, and in the Vulgate text, p. 58. We briefly give the substance from the roll. (*Note continued on the opposite page.*)

[1] Text from *M*: compared with *P*, *S*, *T*. [2] une *S*, *T*. [3] vivaunt *T*. [4] retournera *M*, *T*; returna *S*. [5] ses aunc' *T*. [6] Ros et issint *S*, *T*. [7] de *M*; le *P*; due *S*. [8] *Ins.* qi *P*, *S*, *T*. [9] *Ins.* et *P*, *S*, *T*. [10] *Om.* et *P*, *S*, *T*. [11] soun aunc' *S*, *T*. [12] du les avandit *S*; *sim. T*. [13] duraunt *P*, *S*, *T*. [14] Quere de isto iudicio quia dubium videtur *T in margin*.

31B. THE KING *v.* ROS.[1]

The King brought his *quare impedit* against William de Ros of Ingmanthorpe. And the case was this: The tenements to which the advowson was appendant were in the seisin of a certain Eustacia who espoused one Nicholas. They had issue one W. de C. His father died. Eustacia took a second husband, William de Ros. She died. Ros held by the curtesy and leased the tenements to [his stepson] W. de C. for the term of his life, so that if he died before Ros the tenements with the advowson should return to Ros for the term of his life, to hold in his first estate. While W. de C. was tenant, the church fell vacant. W. de C. presented and was disturbed. He brought the assize of darein presentment and recovered as on the seisin of his ancestors without anything being said, either by him or by Ros, about the lease.[2] And so by reason of the nonage of the heir of W. de C., who held in chief, the King has presented.

Ruston. If we were being impleaded as tenants of the advowson by writ of right and we prayed aid of the person by reason of whose nonage the King brings this writ, the aid would be granted us. And this same W. de C. (by whose death and the nonage of his son and heir the King takes his title to present) had no right to present while Ros was alive, except by reason of the lease made to him by Ros, so that upon his death Ros is in his first estate. We pray judgment.

Stanton, J. For that W. de C. recovered the last presentation as of the estate of his ancestors, and at that time no mention was made of the said lease, and for that the infant during his nonage cannot be party to try the covenant made between his father and Ros, therefore the Court awards that the King recover his presentation against Ros and his damages etc., and that Ros have his recovery against the heir when he comes of age.[3]

Note from the Record (*continued*).

William de Ros de Ingmanthorpe is summoned to answer the King in a *quare impedit* touching the church of Kyrketone. The King, by Henry of Wallineforde,[4] who sues for him, counts that William de Cantilupe was seised of the advowson and presented Richard of Yerdele, who was instituted

[1] A second report of the preceding case.

[2] This would lead one to believe that Ros was a party to this assize. Such, however, does not seem to be the fact.

[3] In one MS. a doubt is expressed as to the soundness of this judgment.

[4] Or 'Wallmeforde.'

Note from the Record (*continued*).

in the time of Edward I., and by whose death the church is now vacant; and that from William the right descended to his son William, who is under age and in ward to the King. Damages are laid at a hundred pounds.

William de Ros pleads that the presentation belongs to him. The advowson was at one time in the seisin of Hugh son of Ralph and Joan his wife, as Joan's inheritance. They presented John le Vavassour, who was instituted in the time of Henry III. From Joan issued one Ralph, who was her heir, and from him one Eustacia, who was his heir, and who married William de Ros. The church being vacant by the death of John [le Vavassour], one Philip de Chauncy and Isabel his wife opposed themselves to the presentment by Ros and Eustacia, who, however, in 19 Edw. I. [1290-1], before John of Metingham and his fellows, justices of the Bench, arraigned an assize of darein presentment against Philip and Isabel and recovered their presentment. Eustacia died, and Ros, having had issue by her, held the advowson with other tenements as tenant by the curtesy. Afterwards a covenant was made between Ros and William de Cantilupe the elder, whereby the former rendered the advowson and other tenements to the latter 'under this condition,' that if it should happen that Cantilupe should die in the lifetime of Ros, the advowson with the other tenements should revert to Ros to hold by the curtesy as he theretofore held. (One 'part' of an indented writing which witnesses this is produced.) Then Cantilupe, by reason of this grant and render, presented the said Richard de Yerdele. So Ros demands judgment on the ground that on Cantilupe's death the advowson reverted to him by virtue of the covenant.

On the King's behalf it is replied that the advowson was long ago in the seisin of Hugh son of Ralph as his own right,[1] who presented the said John [le Vavassour]; that from Hugh issued Ralph, and from Ralph Eustacia; that she, before marrying Ros, married Nicholas de Cantilupe, who begot upon her William de Cantilupe [the elder]; that after her death, the church being vacant by the death of one Thomas of Kent (de Kent), and the advowson being in the hand of William de Cantilupe, the said Philip de Chauncy and Isabel his wife opposed themselves to Cantilupe's presentation;

32. SEPTFONTAINES *v.* LEEDS (PRIOR OF).[2]

Entré, ou l'averement fust receu q'el ne fust unqes seisi en soun demene etc. issi q'el pout estre disseisi.

Entré sur disseisine ou le tenant dit qe le demaundaunt ne fust pas seisi come de fee et de dreit issi q'il poeit estre disseisi, prest etc. Et fuist dit qe tiel respons ne serroit pas accepté etc.

Agneys[3] porta bref d'entré sur la disseisine vers Adam et counta

[1] Not his wife's right, as the impedient alleged. [2] *Vulg.* p. 56. Text from *M*; compared with *A*, *B*, *D*, *P*, *Q*, *S*. Headnotes from *A* and *B*. [3] Une femme *A*, *D*, *Q*.

Note from the Record (*continued*).

that he in Hilary term 33 Edw. I. [1305] arraigned an assize of darein presentment against them before Ralph de Hengham and his fellows, justices of the Bench, asserting that the said Hugh [son of Ralph] made the last presentation; that by this assize it was found (*convictum*) that Hugh as true patron made the last presentation, and also that Cantilupe was the true patron; that thereupon it was awarded that Cantilupe have a writ to the guardian of the spiritualities of the archbishopric of York bidding him admit Cantilupe's clerk. Having tendered an averment by the record, the King's representative adds that, as Ros expressly admits that Cantilupe, who held of the King in chief and whose heir is in ward to the King, made the last presentation, that of Richard [of Yerdele], and that the advowson was the right and inheritance of Cantilupe, and since the said heir cannot be a party to confess or deny the said covenant and writing, especially as he is under age, and since Ros cannot deny that Cantilupe recovered his presentation by the verdict of the said assize and judgment of the King's Court as of his own right, and since this is not in the case mentioned by the Statute touching a presentation by one who has no right [Stat. Westm. II. c. 5], he [the King's representative] instantly (*precise*) demands judgment for the King and a writ to the bishop.

And the record of the assize brought by Cantilupe against the said Philip and Isabel and one Margery Foliot having been inspected,[1] it manifestly appears that Cantilupe recovered his presentation as of his own right; and as Ros shows nothing else to prove his right to present, but only alleges the said covenant between him and Cantilupe, which covenant Cantilupe's heir, being within age, cannot confess or deny, therefore it is awarded that the King have a writ to the Archbishop of York to admit the King's presentee notwithstanding Ros's reclamation, and that Ros be in mercy, saving nevertheless to Ros his action by writ of covenant against the said heir when of full age if [he shall think fit to sue].

The report seems to be incorrect when it represents the advowson as appendant to a manor. On the other hand, the report offers an explanation of the incumbency of Thomas of Kent, which, as the record stands, is somewhat puzzling. Apparently he was instituted by the bishop as upon a lapse.

32. SEPTFONTAINES *v.* LEEDS (PRIOR OF).[2]

In a writ of entry *sur disseisin* in the *post* the demandant counts on her own seisin as of fee and right. *Semble* that the plea 'not seised as of fee and right' will not be allowed. But 'not seised as she asserts so that she could be disseised' is accepted.

Alice brought her writ of entry *sur disseisin* against a Prior and

[1] The substance of it is here given on the roll, but it merely repeats what has been said on the King's behalf. [2] Proper names from the record.

de sa seisine demene com de fee et de dreit en temps[1] etc. en les queux mesme cestui A. n'ad entré si noun pus la diseisine qe un G. fit a mesme cele Agneys.[2]

Pass. Qe ele ne fut unqes seisi com de fee et de dreit issint q'ele pout estre diseisi. Prest etc.

Hervy.[3] Ceo n'est mye respounse en cesti bref, mès serroit bon respounse q'il ne diseisi poynt.

Fris. Nous entendoms qe cele respounse est resceivable[4] de ley, ou autrement grant duresse ensuwereyt, par la reson q'il purreit bien estre qe cele qe ore porte cestui bref n'avoit en les tenemenz forsqe franctenement[5] et qe la reversioun fut a nous, et si nous acceptames ceo counte q'ele fut seisi en son demene com de fee etc.[6] sanz countrepleder, et ele deviast avant q'ele dereignast[7] par jugement, et son heir demanda[8] par autre bref d'entré countaunt de la seisine sa miere com de fee et de dreit, nous ne serroms pas receu de countrepleder cele dreit, pur ceo qe nous l'acceptames avant ces hures en court etc. et a la sute sa miere sanz countrepleder; et issint serroit le fitz enherité ou la mere n'avoit qe franctenement. Par qei etc.

Hervy. Vous dites mal. Quele enroulement averoms nous en ceo cas? Jeo crey qe l'enroulement serra 'quod ipsa non fuit ita seisita quod potuit disseisiri,'[9] et par taunt n'est mye l'averrement r[esceivable].[10]

Pass. L'enroulement serra 'quod ipsa non fuit seisita sicut petit ita quod[11] potuit disseisiri.'[12]

Et ad hoc concordarunt[13] etc.

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), m. 273, Kent.[14]

Bartholomew de Septfontaines (de Septem Fontibus) and Alice his wife demand against the Prior of Ledes a messuage, a mill, a hundred and seventy-four acres of land, four of meadow and two of wood in Merdenne, into which the Prior has no entry save after (*post*) the disseisin which Heymo de Crevequer unlawfully and without judgment did therein to the said Alice after the [time of limitation]. Bartholomew and Alice say that Alice was seised in her demesne as of fee in time of peace in the time of [Henry III.], taking esplees, etc. (*Note continued on the opposite page.*)

[1] *Ins.* de pees *B.* [2] *Om.* en les . . . Agneys *A*, *Q.* [3] *Om.* this speech *A.* [4] acceptable *A*, *D.* [5] *Om.* franctenement *M*; *ins. Al. Cod.* [6] et de dreit *A.* [7] eust dereine la tenance et *B*; distreyngast *D.* [8] demandast *P*; *ins.* ore les tenemenz *A*, *D*, *Q.* [9] non fuit seisita ita quod disseisiri pōtuit *B.* *Here ends speech, A, D, Q.* [10] et par tant ne serreit ceo encontre leyre [= l'heir] *S.* [11] *Ins.* non *Q.* [12] End of report, *A*, *D*, *Q.* [13] *Ins.* omnes *B.* [14] The first letters of the name of the county have perished. It ends with *nc*, and might be *Linc'*; but Leeds and Marden seem to point to *Kanc'* for Kent.

counted on her own seisin as of fee and of right in time of peace, saying 'into which the Prior has no entry save after (*post*) the disseisin which one G. did to Alice.'

Passeley. She was never seised of fee and of right in such wise that she could be disseised.

STANTON, J. That is no good answer in this writ, but it would be a good answer to say that G. did not disseise her.

Friskeney. We think that by law this answer is receivable. Otherwise great hardship would ensue, for it might well be that she who now brings this writ had only freehold in the tenements and that the reversion was in us; and if we were to accept this count that she was seised in her demesne as of fee and of right without counterpleading it, and she died before she had deraigned [her right] by a judgment, and her heir brought another writ of entry counting on the seisin of his mother as of fee and of right, then we should not be received to counterplead that [allegation of fee and] right, on the ground that we had previously accepted in court [the mother's similar allegation] without counterpleading it; and in that case the son might inherit where the mother had no more than freehold. Wherefore etc.

STANTON, J. What you say is wrong. What enrolment are we to have in this case? I think it should be 'not so seised that she could be disseised,' so your averment is not receivable.[1]

Passeley. The enrolment shall be 'not so seised in such manner as she demands so that she could be disseised.'

To this [all] agreed.

Note from the Record (*continued*).

The Prior, after formal defence, denies that Alice was ever seised so that she could be disseised as the said Bartholomew and Alice say ('bene defendit quod predicta Alicia nuncquam fuit seisita de predictis tenementis cum pertinenciis ita quod potuit inde disseisiri sicut predicti Bartholomeus et Alicia dicunt').

Issue is joined, and a *venire facias* is awarded for the quindene of Easter. On that day a verdict is found that Alice never was seised of the said tenements so that she could be disseised thereof. Therefore let the Prior go without day, and let Bartholomew and Alice his wife take nothing by their writ, but be in mercy for their false claim.

If this be the reported case, the report seems to err in stating that the demandants alleged a seisin, not only as of fee, but as of right.

[1] Or 'and so it [the enrolled plea] will not make against the heir.' But perhaps we ought to read 'and so it will not make in favour of the heir' in the manner suggested by Friskeney.

33. BERENGER *v.* ST. HELEN.[1]

Attachement sur la prohibicioun ou le defendaunt fist sa ley q'il ne suit point etc. Et le pleintif avoit un bref de somouns pur quei il seuit execucion. Le defendaunt dit qe il ne sewist point. Et sur ceo l'enqueste pris. *Quod mirum est.*

Ingram Berengier[2] siwy un attachement sur la prohibicion vers William de Seint Elyn,[3] et dit q'il avoit suwy et[4] de chatels etc. qe ne sount de testament etc. encountre la prohibicion etc. W. vint en court[5] et gagea sa ley q'il ne suwy poynt etc. Pendaunt quele plè mesme celui Ingram vint a la court[6] par sa suggestioun et[7] avoit bref hors des roudles de attacher[8] mesme celui W. d'estre a un certein jour a moustrer s'il[9] suwyt execution de mesmes ces chatels. W. respont q'il ne suwyt point execucion[10] et se mist en bon pays; et pus[11] fit sa ley, issint q'il departit quite etc.[12] Pus l'enqueste vint en court a certein jour.

Rust. pur Ingram pria l'enqueste.

Herle. Sire, nous n'entendoms mye qe enqueste sur ceo[13] deit passer, par la reson qe l'execucion de qi l'enqueste deust passer si est accessorie de plè precedent;[14] et depus q'il ad fait sa ley de principal, nous entendoms qe de cel accessorie il est assoutz. Jugement si enqueste etc.

Pass. Si l'enqueste dirreit q'il ad suwy execucion etc., dont par verdit de cele enqueste purreit le jugement qe fut fet sur le principal anyntir, et issint un jugement serreit defet par un autre en un mesme plè, qe n'est mye soeffrable de ley.

{*Pass.*[15] Tout voille la partie accepter l'averrement, la court ne le resceivereit[16] pas, qar possible est qe l'enqueste deist q'il ad siwy etc.,[17] dount par tiel verdit serroit le jugement sur le principal reverse, et issint un jugement par un autre anyenti en un mesme plee.[18]}

[1] *Vulg.* p. 56. Text from *M*: compared with *A*, *B*, *D*, *P*, *Q*, *S*, and a short note in *X*. Headnote from *B*. [2] Johan Borugh' *A*; Ingram Beringier *B*; Jordan Berug' *D*; Ingram de Beringg' *M*; Ingram de Berenger *P*; Jordan Berug' *Q*; Ingram de Beruger *S*. [3] Elen' *A*; Eleyn *B*; Heleyne *Q*; Eleyne *S*. [4] siwy plee etc. *B*. [5] *Om. to next* court *A*, *D*, *Q*. [6] *Ins.* et *B*. [7] *Om.* et *B*. [8] bref de somoundre *B*. [9] pur quei il *B*, *D*, *P*, *Q*. [10] *Om.* execucion *B*. [11] en enquest, avaunt qe lenquest vient en court *A*; *sim. D*, *Q*. [12] par jugement *B*, *P*, *S*. [13] sur ceste execucion *B*. [14] pledie *B*, *P*. [15] Substitute this for last speech *B*; *sim. A*, and with variations *D*, *P*, *Q*, *S*. [16] accepteret *A*, *D*, *P*, *Q*. [17] execucion *A*, *D*, *P*, *Q*. [18] *Ins.* qe serroit un inconvenient de ley *A*, *D*, *Q*.

33. BERENGER *v.* ST. HELEN.[1]

When 'law' has been waged and made, the Court will not afterwards take the verdict of an inquest which might implicitly contradict the 'law,' even though between the wager and the making of the 'law' the parties have joined in an issue to the country.

Ingram de Berenger sued an attachment on a prohibition against William of St. Helen and said that he had sued [in an ecclesiastical court] for chattels which do not belong to testament [or marriage], contrary to a prohibition. William came into court and waged his law that he did not sue etc. Pending this plea, Ingram came into court and on his suggestion he had a [judicial] writ issuing out of the rolls to attach William to appear on a certain day to show why he sued execution of these same chattels. William answered that he did not sue execution and put himself upon the country. And [before the inquest came into court] he made his law and departed quit by judgment. Then the inquest came into court on a certain day.

Ruston, for Ingram, prayed that the inquest might be taken.

Herle. Sir, we do not think that the inquest should pass upon this point, for the execution upon which the inquest is to pass is accessory to the precedent plea; and, since [William] has made his law as to the principal matter, we hold that he is absolved of this accessory matter. Judgment, whether an inquest etc.

Passeley. If the inquest were to say that he had sued execution, then by the verdict of this inquest the judgment that was given on the principal point might be annulled, and so one judgment might be defeated by another in one and the same plea, and that the law will not suffer.

{*Passeley.*[2] Even if the party wish to accept this averment, the Court will not receive it. For it is possible that the inquest might say that [William] did sue execution, and then by such a verdict the judgment given in the principal matter would be reversed, and one judgment would be annulled by another in the same plea, which would be an absurdity in law.}

[1] Record not found: but see Appendix II. to this volume.

[2] An alternative for Passeley's last speech.

Toud. La ley put estre fals.[1] Par quei vous ne devez par taunt l'enqueste targer.[2]

Ber. L'atteynt n'est mye grantable en ceo cas.

Rust. Mesme la resoun q'il ount ore dit fut alleggé avant ceo qe l'enqueste se joynt parentre nous, et *hoc non obstante* l'enqueste fut agardé. Par qei ele deit ore passer.[3]

Hervy. Si l'enqueste eust esté agardé et prist[4] au primer jour, unqore n'eust ele mye passé[5] avant ceo q'il out fet sa ley de principale[6] etc.

34. ANON.[7]

Nota ou quiteclamaunce fust mis avaunt après l'enqueste joint, et pur çoe qe le partie ne vodereit pas dire le quel çoe fist avaunt l'enqueste joint ou après, l'enqueste fust pris etc.

Une quiteclamaunce fut mys avant après enqueste joynt en barre de action,[8] et l'enqueste deveroit passer.

Pass. pur le demandant. La quel fut la quiteclame fet, avant l'enqueste joynt ou après ?

Hamp.[9] A ceo n'avoms mester a respondre, qe nous la mettoms avant pur barrer vous del action.[10]

Lambert. Si vous ne diez qaunt la quiteclame fut fet, grant duresse de ley ensuereyt, qe si homme fut en plè[11] de terre et fit defaute, et pus qaunt il deveroit fere sa ley mette avant quiteclame, par ceo sauvereit il sa defaute sanz ceo q'il deit qaunt la quiteclame fut fet ou avaunt la defaute[12] ou après, et issint serreit chescoun defaute despuny, qe serroit inconvenient de ley. Par qei etc.

Hervy ad idem.[13] Si jeo porte bref vers vous *ad terminum qui preteriit* de lees mon auncestre, et vous en responaunt[14] deissez q'il[15] avoit fee,[16] et l'enqueste se joynsist entre nous, et pus al enqueste prendre meissez une quiteclame,[17] entendez vous qe cele quiteclame[18]

[1] fait *A*; fait' *D*; fause *B*, *S*; faux *P*, *Q*. [2] par un fause ley ne doit lenqueste estre targie *B*; par qei lenqueste ne devetz vous charger *A*, *D*; par qei vous ne devetz la ley targer *Q*. [3] agarde et depuis qele este agarde ele doit passer *B*. [4] prest *B*, *P*, *S*; pris *D*, *Q*. [5] ele ne eust pas este pris ne passe *B*. [6] avaunt qe la ley eust este fayt du principal *A*. [7] *Vulg.* p. 56. Text from *M*: compared with *A*, *B*, *D*, *P*, *Q*, *S*, *T*. Headnote from *B*. [8] joynt qaunt lenqueste fuist a la barre *B*. [9] Hampton' *A*; Hampto' *D*. [10] avaunt en bare de vostre actioun *A*. [11] enplede *A*, *D*. [12] *Om.* la defaute *A*, *D*. [13] *Om.* ad idem *A*, *D*, *Q*. [14] repliaunt *S*, *T*. [15] qe celuy a qi le lees fuist fait *B*. [16] qil lessa en fee *A*, *D*, *Q*; qe vous avez fee *S*, *T*. [17] relees *B*. [18] *Ins.* apres lenqueste *A*, *D*.

Toudeby. His law may be false, so you ought not thus to delay the inquest [by a falsely sworn law].

Bereford, C. J. An attaint could not be granted in such a case.

Ruston. The argument that they now advance was urged before the inquest was joined between us, and none the less the inquest was awarded. Therefore it ought now to pass.

Stanton, J. Albeit the inquest were awarded and ready[1] on the former occasion, still it would not have passed before he made his law in the principal matter.

34. ANON.[2]

An issue to the country has been joined. On the day for the inquest the tenant produces a quitclaim. This will not delay the inquest unless it was made after the joinder of issue.

After inquest joined, a quitclaim was put forward in bar of the action. The inquest was about to pass.

Passeley for the demandant. Was the quitclaim made before or after the inquest was joined?

Hampton. We need not answer. We put it forward to bar you from the action.

Trikingham, J. If you do not say when the quitclaim was made, a great hardship in the law might follow. Suppose that in an action for land a man made default, and then, when he was to make his law [in disproof of the default], he put forward a quitclaim, [according to you] he would thereby save his default without having to say whether the quitclaim were made before the default or afterwards; and thus every default might go unpunished, and that would be an absurdity in law.

Stanton, J. Suppose that I bring against you a writ *ad terminum qui praeteriit* on the lease of my ancestor, and you answer and say that [the supposed lessee] had the fee,[3] and suppose that an inquest were joined between us, and then when the inquest was to be taken, you produced a quitclaim, think you that the

[1] There is a choice between *prest* (ready) and *pris* (taken), and the former seems preferable.

[2] Record not found.

[3] Or 'that the lease was in fee' or 'that you have the fee.'

serroit barre a l'enqueste q'il ne passereit[1] si vous ne deissez qaunt il fut fet, ou avant l'enqueste ou après?[2] Noun serroit, et ele passera[3] non obstante.[4]

35. ANON.[5]

Scire facias ou piert qe dette put estre conu a ij. et l'un ne serra mye r[espoundu] sauncz l'altre.

Un A. porta le *scire facias* vers B. a savoir moun s'il savoit rien dire pur qei execucion ne se deust fere sur un conisance de dette qe se fit a lui. B.[6] demande oye de la conisance et avoit. La quele volet qe B.[7] avoit conu a F. et A. x. liv. a paier a certein jour. B. demanda jugement s'il deust estre r[espoundu] depus qe la conisaunce fut fet a eux deux. A. pria q'il fut severee depus qe F. ne veot[8] pas suwer.

Ber. Il n'est mye en play de dette com en play de terre[9] ou severalté deit estre fet, qe en play de dette l'acquitance de un[10] barre l'un et l'autre de l'enter, et si ne fet l'acquitance[11] en play de terre.

Toud. Si nous ne seoms ore r[espoundu] nous serroms barré pur touz jours pur[12] le noun sute,[13] qe serroit duresse.

Ber. S'il resceut[14] une fole[15] conisance, a qi veut il retter sa folie etc.? Jeo vous dy q'il ne serra mye soul r[espoundu] sanz l'autre.[16]

Fut agardé a drein q'il ne preist rien par son bref set in misericordia.

36. ANON.[17]

Cessavit, ou le tenaunt conust tener de ly ceus tenemenz et altres par tel service, et fust chacé dire [nient][18] seisi.

Un A. porta le *cessavit* vers B. et dit q'il tient de li un mies par services de xij.[19] d. Le tenaunt dit q'il tient de luy le mees et iij.

[1] barre a moi *A*, *D*, *Q*. [2] qaunt etc. *B*. [3] passast *B*. [4] *Ins.* et pur ceo respoundez *A*; et pur ceo respoignetz *Q*; *sim. D*. Semble q'il ne put pleder en barre mes metre en evidence etc. *T in margin*. [5] Text from *M*: compared with *A*, *D*, *P*, *Q*, *S*, *T*, and a note in *X*. [6] G. *M*. [7] G. *M*. [8] vousist *A*, *D*. [9] End of speech *A*, *D*, *Q*. [10] *Ins.* baroun *M*. [11] *Ins.* lun *P*, *T*; luyn *S*. [12] par *D*, *Q*. [13] *Ins.* lautre *T*. [14] *Ins.* ore *D*. [15] Il resceut un feble *Q*. [16] *Om.* sanz lautre *A*, *D*, *Q*. [17] Text from *A*: compared with *D*, *Q*. Headnote from *A*. [18] A word destroyed, *A*. [19] ij. *Q*.

quitclaim would be a bar to the passing of the inquest unless you said whether the quitclaim was made before or after the joinder of the inquest? Not so; the inquest would pass all the same. So answer.[1]

35. ANON.[2]

One of two joint creditors cannot sue without the other. In such a case there can be no 'summons and severance' enabling the one creditor to recover an aliquot part. Release by one binds all.

One A. brought the *scire facias* against B., calling upon him to make known whether he had anything to say why execution should not be made upon the recognisance of a debt made to A. Thereupon B. demanded a hearing of the recognisance and had it. It said that B. had confessed to F. and A. a sum of ten pounds payable on a certain day. Thereupon B. demanded judgment whether A. should be answered, since the recognisance was made to F. and A. Then A. prayed that he might be severed, since F. would not sue.

Bereford, C. J. The case of a plea of debt is not like that of a plea of land where a severance can be made; for in a plea of debt the acquittance by one [of two joint creditors] bars both of them from the whole, while in a plea of land [by two persons jointly entitled] that is not so.

Toudeby. If we be not now answered, we shall be barred for ever by a nonsuit, and that would be hardship.

Bereford, C. J. If he accepted a recognisance in a silly form, who is to blame for his folly? I tell you that without the other [creditor] he shall not be answered.

In the end it was adjudged that he took nothing by his writ, but was in mercy.

36. ANON.

To a *cessavit per biennium* for Blackacre, the tenant can plead that the rent mentioned in the count was really paid for Blackacre and Whiteacre, and that he is ready to pay all arrears attributable to the tenancy of Blackacre.

The *cessavit* was brought by A. against B., and A. said that B. held of him a messuage by the service of twelve pence. The tenant

[1] An early note suggests that, though the release cannot be pleaded in bar, it can be put in evidence.

[2] This case is Fitz., *Nonsuit*, 18. Record not found.

acres de terre,[1] par qei il prient [2] qe les services seient proporcionés [3] qaunt a les iij. acres de terre.[4] Et qaunt al mees, il fut prest a respoundre de les [5] arreres de taunt com amounte al mees.

Inge. Qei respoundez vous a nostre seisine,[6] qe nous vous dioms qe nostre counte [7] est nostre avowrie et voloms averrir nostre seisine; et en ceo cas d'avowerie vous respounderez [8] a nostre seisine, et *per consequens* ici.

Hervi. Il covent respoundre [9] a la seisine.

Hedon. Nient seisi pur le mies taunt soulement de les d[eners.] Prest etc. Mès pur le mès et iij. acres de terre. Prest etc.[10]

37. ANON.[11]

Intrusioun, ou le baroun et la femme averent la vewe de tenemenz [en] qe la femme soy abatist tant com el fust sole.

Un bref de intrusion fust porté vers un homme et sa femme del abatement la femme taunt com ele fust soul; et demaunderent la vewe etc.

Scot. La vewe ne devetz avoir qar ceo est de vostre tort demeigne ou vous ne devez mesconustre en queux tenemenz vous abatistes [12] après le decès cele qe les tient en dower de nostre heritage.

Pass. ad idem. Vous ne devetz la vewe avoir [13]: 'ubi dimisio facta fuit [14] tenenti et non antecessori, non concedatur' [15]: nent plus de ceste parte. Depus q'ele entra par soun abatement [16] q'est plus heynouse choce qe n'est lees, demaundoms jugement si la vewe i gise.[17]

Woston.[18] Jeo pose qe bref fust porté vers une femme taunt com ele fust sole, et la vewe luy fust graunté et testmoigné, et pus ele abatist le bref par nountenure, et pus prist baroun, et pus celuy sussit [19] aultre bref vers le baroun et la femme, eux averount [20] la

[1] *Ins.* par les services de xij. d. *D*, *Q*. *Ins.* et il ad purchace les iij. acres de terre *D*. [2] prie *Q*; pri *D*. [3] aporcionetz *Q*; *sim. D*. [4] *Ins.* etc. *D*, *Q*. [5] prest de rendre les *D*, *Q*. [6] issue *Q*. [7] qe conu *Q*. [8] et la respondr' *Q*. [9] mustrer r[espouns] *Q*. [10] Nyent seisi mes tant soulement de les xij. d. prest etc. mes pur le mees et iij. acres de terre etc. prest etc. et alii econtra. *Q*; *sim. D*. [11] *Vulg.* p. 58. Text from *A*: compared with *B*, *D*, *M*, *P*, *Q*, *S*, *T*, and a note in *X*. Headnote from *A*. [12] entrastes *M*, *P*, *T*; vous estes entre *B*. [13] *Ins.* par la reson qe Statut dit *M*, *P*, *S*, *T*. [14] fuerit *Al. Cod.* [15] *Ins.* visus *Al. Cod.* [16] abatement demesne par plus fort reson qar la ou abatement *Q*; *sim. P*, *S*, *T*. [17] la vewe grosse *A*; gise *Q*. [18] West. *B*, *M*, *P*; Wescot' *Q*, *S*. *Ins.* la veuwe est necessarie come en autre case qe *B*. [19] suscita *Q*; suscite *D*. [20] ele avereyt *P*.

said that he held of A. the messuage and three acres of land by the service of twelve pence.[1] Wherefore he prayed that as regards the three acres the services might be apportioned. As to the messuage, he was ready to answer for the arrears that were due for the same.

Ing[ham]. What do you answer to our seisin? We tell you that our count [in this *cessavit*] is [equivalent to] our avowry; and we will aver our seisin. But in case of an avowry you would have to answer to our seisin, and consequently you must do so here.

STANTON, J. It behoves you to answer to the seisin.

Hedon. Not seised of the rent as only for the messuage, but for the messuage and three acres of land. Ready etc.

37. ANON.[2]

A view is granted in a writ of intrusion against husband and wife, although it charges the wife herself with intruding while she was sole.

A writ of intrusion was brought against husband and wife on an abatement done by the wife while sole; and the tenants demanded a view.

Scoter. You ought not to have a view, for this is your own tort, and you cannot be ignorant as to what tenements those were into which you abated on the death of the doweress who held of our inheritance.

Passeley to the same effect. You ought not to have a view. The Statute says: 'where the demise was made to the tenant and not to an ancestor, the view shall not be allowed.'[3] And since she entered by abatement, which is a more hateful thing than a lease [such as the words of the Statute mention], we pray judgment whether a view will lie.

Westcote. Put case that a writ is brought against a woman while she is sole, and the view is granted her and testified, and then she abates the writ by [plea of] nontenure, and then she takes a husband, and then the demandant brings another writ against her and her

[1] One book seems further to suggest that the demandant has purchased the three acres from the tenant.

[2] This case is Fitz., *View*, 139.

[3] Stat. Westm. II. c. 48: 'In all writs also where lands be demanded by reason of a demise made by the demandant or his ancestor to the tenant, and not to his ancestor, . . . view shall not be granted.'

vewe nent countreesteaunt la vewe en l'autre bref.[1] Auxint de ceste part.

Scrop.[2] Il porra bien[3] estre qe le baroun trova la femme seisi de plusours tenemenz, les uns par successioun, les aultres par purchace ou par abatement; par qei il porra bien mesconustre queux tenemenz sount en demaunde s'il n'eyt la vewe.

Herle. Si nous eussoms graunté la vewe par quele il porreit estre certé de la demaunde et pus venist en court et pleda,[4] il ne porra[5] doner nent plus haut r[espouns] qe la femme ne poet ore. Par qei etc.

Postea fuit visus concessus par Hervi.[6]

38. STIRKELAND *v.* BURTON.[7]

Nota ou *cui in vita* fut abatue.

Nota bref d'entré abatu, fondu sur le *cui in vita*, pur ceo qe le baroun la femme fut en vie jour de bref purchacé ou le bref le suppose[8] mort, non obstante q'il fut mort le jour de plee.

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 463, Westmor.

Walter de Stirkeland, by Adam de Burton his attorney, demands against Adam Warde a messuage and twenty-four acres of land in Helsington as his right and inheritance, and into which Adam has no entry save by (*per*) William de Styrkeland, sometime husband of Elizabeth de Eyncurt, mother of Walter, who demised them to him (Adam), and whom (William) she in her lifetime could not contradict. (*Note continued on the opposite page.*)

39. ANON.[9]

Nota un meme noun.

Un bref fut porté vers J. Foy,[10] qe fut essonié et avoit jour par esson[iour], a quel jour il vint en court.[11]

[1] *Ins.* mes auxi ne avereit ele pas si ele fut sole tenant cest pur son abatement demene. Par qei il ne sount pas semblables. Et demandoms jugement *M*; *sim. P, S, T.* *Ins.* et si ele fuist sole ele naveroit pas pur son abatement et in casu isto *B.* [2] *Ins.* Justice *Q.* [3] *Ins.* ensemble *P*; ester ensemble *S, T.* [4] pledast *M.* [5] Si nous eussoms grante la veuwe il ne purreit *B.* [6] Et pus fut la vewe agarde par Hervi. *M, P, T.* [7] *Vulg.* p. 53. Text from *M*: compared with *B, P, S.* Heading from *S.* [8] bref purchace qe lui supposa *B.* [9] *Vulg.* p. 55. Text from *M*: compared with *B, P.* [10] Fox *B, P.* [11] *Om.* qe fut . . . court *B.*

husband, they shall have a view, notwithstanding the view in the other writ.[1] So in this case.

Scrope, J. It well may be that the husband found his wife seised of divers tenements, some by inheritance, and some by purchase, and some by abatement. So he may well be ignorant which are the tenements in demand unless he have a view.

Herle. If we granted a view so that he might be certified of the demand and then he came into court and pleaded, he would not be able to give an answer higher than that which his wife can give now. Wherefore etc.

Afterwards the view was granted by Stanton, J.

38. STIRKELAND *v.* WARDE.

Sur cui in vita: writ purchased while the husband was living.

A writ of entry *sur cui in vita* was abated because the husband, whose death was supposed by the writ, was alive on the day of writ purchased, though he was dead on the day of the plea.

Note from the Record (*continued*).

Adam, by Simon Guype his attorney, says that he ought not to answer him (Walter) to this writ; for he says that this sort of writ lies (*huiusmodi breve competit*) after the death of father and mother to demand the inheritance of the mother alienated by the father; and that Walter de Stirkelaund, sometime husband of Elizabeth and father of Walter, was living on the day of the purchase of this writ.

Walter cannot deny this. Therefore it is awarded that Adam go thence without day, and that Walter take nothing by this writ, but be in mercy for his false claim.

39. ANON.

Identity of name.

A writ was brought against J. Fox, who was essoined and had a day given to him by his essoiner. On that day [a man of that name] came into court.

[1] Some books add 'But that she would not have if she were sole tenant. That is because of the abatement. So the cases are not alike, and we demand judgment.' This seems to confuse two speeches.

Hedon. Sire nous portams bref vers J. Foy qe avoit jour en court par somounse, a quel jour il fut essonié et avoit jour outre par asson[iour] ore a la xv. de Seint Michel, et ore fit defaute, et prioms un grant *cape*.

Un autre J. Foy vint en court et dit q'il mesme fut tenant le jour de bref purchacé et fut essonié et ore est venu en court prest a pleder et prie qe nul defaute etc.[1]

Hedon. Nent tenant[2] jour de bref purchasé. Prest etc.

Et alii e contra.

{En[3] bref vers J. Fox un J. Fox vint par esson[iour] et se profri a pleder.—*Hedone.* Celi est altre persone vers qi nous portames nostre bref qi port mesme le noun, par qi defaute nous prioms le grant *cape*.—*J. Fox.* Nous sumes tenant et fumes jor du bref et prioms qe nul procés se face sur altri defaute de ceste terre.—*Pass.* Vous ne futes par tenant jor du bref : prest etc.—Alii econtra.}

40. ANON.[4]

Quid iuris clamat porté vers femme tenant en dower : ou puis la conisaunce ele prist baroun, et *non obstante* ele atourna etc.

Un homme[5] conusoit la reversioun de[6] certein tenemenz qe une femme tynt en noun de dower de son heritage a un Robert. Le jour de la conisaunce la femme fut sole. Robert suy le *quid iuris clamat* vers la femme. En le meen temps avant q'il vint en court[7] ele prist baroun. Pus ele vint et dit qe ele ne se devereit atturner qe ele fut covert de baroun. Et *hoc non obstante* par agard ele se atturna. Et fut la cause pur ceo qe le jour de la conisaunce et del atturnement funt[8] auxi com une jour etc.[9]

41A. ANON.[10]

Dower porté vers ij. en comune et vouch[erent] severalment et descloa soun cas ; et stetit vocacio.

Une femme porta soun bref de dower vers ij. en comune, et qaunt a la moité l'un voucha a garraunt R., l'autre un aultre del autre moyté.

[1] Un autre avoit tiel noun et se profri de pleder *B*. [2] *Ins.* de nostre demaunde *B*. [3] This version from *X*. [4] *Vulg.* p. 56. Text from *M*: compared with *B*, *P*, *S*, and a note in *X*. Headnote from *B*. [5] Une femme *S*. [6] *Om.* la . . . de *B*. [7] *Om.* avant . . . court *B*. [8] sunt *S*. [9] sount tout un jour en ley *B*. [10] Text from *A*: compared with *D*, *Q*.

Hedon. We brought our writ against J. Fox who had a day in court by summons. On that day he was essoined and had a day by his essoiner now on the quindene of Michaelmas. And now he makes default and we pray the grand *cape.*

The J. Fox who had come into court said that he was tenant on the day of writ purchased, and that he was essoined, and that he has now come into court ready to plead. And he prayed that no default [by another might turn to his prejudice.]

Hedon. Not tenant on the day of writ purchased. Ready etc.

Issue joined.

{In [1] a writ against J. Fox, one J. Fox came as after an essoin and proffered to plead.—*Hedon.* This is another person than he against whom we brought our writ, though he has the same name. We pray the grand *cape* as on a default.—*J. Fox.* We are tenant and were so on the day of writ purchased, and we pray that no process touching this land be made on another's default.—*Passeley.* Not tenant on the day of the writ.—Issue joined.}

40. ANON.[2]

A woman is compelled to attorn to the conusee without joinder of her husband, though between the date of the conusance and that of her appearance she married.

One man made conusance in court to another of tenements held by a woman in dower of the conusor's heritage. On the day of the conusance the woman was sole. The conusee sued the *quid iuris clamat* against the woman. Before she came into court she took husband. Then she came and said that she ought not to attorn as she was covert. Nevertheless she attorned by award of the Court. The reason for this is that the day of the conusance and the day of the attornment are as it were one day etc.

41A. ANON.[3]

Tenants in common vouch severally, each a different warrantor for his share.

A woman brought her writ of dower against two in common; and as to the one moiety, one of them vouched R., and as to the other moiety, the other of them vouched another person.

[1] This from a volume which generally gives no more than abstracts.

[2] Record not found.

[3] Record not found. Proper names uncertain. See Tait, Medieval Manchester, 144.

Lauf. Vous avet conu la tenaunce en comune auxi com nostre bref suppose. Jugement, si a tiel voucher severalment etc.

Herle. Le manier fust en ascun temps en la seisine un Johan de J. Descendit a A. et B.[1] com a ij. filles et un heir. A.[2] fust esposé a Robert Waulter qe tient la moyté du manier en comune par la ley di' Engleterre etc. et lessa soun estat a Aleyn.[3] B.,[4] qe fust esposé a Robert de Grellé, avoit un fitz Thomas, le quel graunta sa moyté a Edmund a tenir en comune ove Aleyn a terme de la vie Edmund ; et desicome le lees est fait a chescun de nous severalment de la moyté et nous avoms vouché solom le fait et solom le cas, jugement si le voucher etc.

Lauf.[5] Si vous agardez le voucher bon del houre q'il ad conu la tenaunce en commune, nous r[espondroms] asset.

Hervi. Estoise le voucher.[6]

41B. ANON.[7]

Une femme porta son bref de dowër vers deux qe tyndrent joyntement, et le cas fut declos par *Herle*[8] issint : Les tenemenz furent descenduz a ij. filles.[9] L'un se maria et[10] avoit issue.[11] Ele morust. Le baroun tynt par la ley d'Engleterre joyntement ovesqe l'autre.[12] Et l'autre soer morust. Le baroun lessa son estat a un de les ij. les queux etc. et de cel estat lui vouch[e].[13] Et l'autre[14] soer lessa son estat al autre vers qi etc. Et issint tignent[15] il joyntement et vouchent severalment chescun com son feffour.[16]

Launf. Depus q'il ount conu q'il tignent jointement, n'entendoms mye q'il pussent severalment voucher etc.

Hervy. Savez autre chose dire pur qei le voucher n'est bon ?

Launf. Nanyl, mès en voz agards seit.[17]

Hervi. Vous n'avez rien unqore dit. Pur qei etc.

[1] Helewyse et Hawys *Q*. [2] Helewys *Q*. [3] *Om.* et . . . Aleyn *D*, *Q*. [4] Hawys *Q* ; Helewise *D*. [5] *Om.* this speech *Q*. [6] *Ins.* et stetit vocatio *D*. [7] *Vulg.* p. 56. Text from *M*: compared with *B*, *P*, *S*, *X*. [8] Ber. *B*. [9] *Ins.* come a un heir *B*. [10] *Om.* et *M*. [11] *Om.* et . . . issue *B*. [12] *Ins.* parceynere *B*. [13] voucha *P*, *S* ; a un de ceux vers queux le brief est porte *B*. [14] lissue lautre *B*, *P*, *S*. [15] tyndr' *B*. [16] severalment lour feffours *B*. [17] mes la demorroms en vos agardz *B*.

Laufer. You have confessed the tenancy in common supposed by our writ. Judgment, whether you can be received to vouch severally.

Herle. The manor was at one time in the seisin of John of J. It descended to Helewise and Hawise as two daughters and one heir. Helewise was espoused to Robert Walter, who held a moiety of the manor in common by the curtesy and demised his estate to Alan. Hawise was espoused to Robert de Grelley, and had a son, Thomas, who granted his moiety to Edmund to hold in common with Alan for the term of Edmund's life[1]; and, since a lease of a moiety is made to each of us severally, and since we have vouched according to the facts of the case, we pray judgment whether the voucher [be not good enough].

Laufer. If, after they have confessed the tenancy in common, you hold this voucher good, we shall have answer enough to give.

STANTON, J. Let the voucher stand.

41B. ANON.

A woman brought her writ of dower against two who held jointly.[2] The case was thus disclosed by *Herle*:—Tenements descended to two daughters. One married and had issue. She died. Her husband held as tenant by the curtesy along with the other. That other died. The husband leased his estate to one of the tenants in the present action, who vouches him for that estate. And [the issue of[3]] the other sister leased her estate to the other tenant in the present action. So these two tenants hold jointly; but they vouch severally each one his feoffor.

Laufer. Since they have confessed to holding jointly, we do not think that they can vouch severally.

STANTON, J. Have you anything else to say against the voucher?

Laufer. No. We submit to your judgment.

STANTON, J. You have said nothing as yet. Wherefore etc.

[1] Alan and Edmund must be the tenants in the action.

[2] See the previous report of this case. The terms 'jointly' and 'in common' seem to have often been used indiscriminately.

[3] Our books differ as to whether these words should be inserted.

42. ANON.[1]

Nota de un woucher en plè d'awouesoun.

Si un homme deit voucher a garr[aunt][2] en plè d'avowesoun d'eglise, et le vouch[é] perde, le vouch[our] recovera vers le garr[aunt] pur lui et pur ses heirs a tous jours de chescun mar[ché] xij. d. solonc ceo qe la eglise vaut par an: par *Berr.*[3]

43. ANON.[4]

Dower ou ele demora ov soun avouter etc.

Alice de S.[5] porta son bref de dower vers Robert Fox etc.

Scot. Dower ne deit ele avoir, par la reson qe ele se alopa[6] de son baroun et demorra ove son advouter en tiel countee sanz estre reconsilié en la vie son baroun.

Et alii e contra. Ideo ad patriam.[7]

{Sponte[8] virum mulier fugiens et adultera facta
Dote sua careat nisi sponsi sponte retracta.}

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179).

Except in the matter of proper names more than one case on the roll corresponds with that here reported. In one (r. 250d, Essex) Maud, sometime wife of Elias le Dyer, demands dower in Chelmsford against Robert de St. Quyntin. She is met by the plea that she went off and abode at Oxford with John de Verney in adultery, without being (*absque hoc*) reconciled to

44. ANON.[9]

Nota en quel cas homme serra resomouns etc.

En cas de bastardie alleggé le tenant irra[10] sanz jour jesqes la court le Roy soit asserté par la court etc.,[11] et dont serra[12] resomouns. Mès en cas de dower ou excepcion soit mys qe la femme ne fut unqes

[1] *Vulg.* p. 56. Text from *M*: compared with *B*, *P*, *S*, *X*. [2] Un home vouche a garr' *B*. [3] *Om.* par Berr. *B*. [4] *Vulg.* p. 56. Text from *M*: compared with *B*, *P*, *S*, *X*. [5] Un feme *B*. [6] alloigna *B*. [7] *Om.* ideo ad patriam *B*. [8] From *P*. [9] *Vulg.* p. 56. Text from *M*: compared with *B*, *P*, *S*, *X*. [10] serra *B*, *S*. [11] christiene *B*. [12] istra *B*; issera *S*.

42. ANON.[1]

Measure of the vouchor's recompense where the warrantor loses an advowson.

If in a plea of advowson a man vouches to warrant, and the vouchee loses, the vouchor shall recover against the vouchee for himself and his heirs for ever a recompense to the amount of twelve pence in the mark of the annual value of the church: per BEREFORD, C. J.

43. ANON.

Elopement as a bar to dower.

Alice of S. brought her writ of dower against Robert Fox.

Scoter. Dower she ought not to have, for she eloped from her husband and abode with her adulterer in such a county without being reconciled to her husband in his lifetime.[2]

Issue joined. And so to the country.

{In one of our manuscripts the point of this case is stated in two hexameters which may be seen on the opposite page.}

Note from the Record (*continued*).

her husband. This allegation is traversed and issue is joined. In another case (r. 313d, Glouc.) Eustachia, sometime wife of John Dunheved, demands dower against Isabel de Haggeleye. The plea is that she eloigned herself to the vill of Bamebury in the county of Oxford and abode there with John Reymund in adultery, without being reconciled to her husband. A verdict is found for the demandant and she has judgment.

44. ANON.

Practice where issues are sent to the Court Christian.

In a case of bastardy alleged the tenant shall go without day until the King's Court be certified by the Court Christian, and then he shall be resummoned.[3] But in a case of dower where the plea is that the woman was never coupled in lawful wedlock to him upon whose

[1] This case is Fitz., *Recovere en value*, 9.

[2] See Stat. Westm. II. c. 34.

[3] Or 'and then a resummons shall issue.'

acouplé en leal matrimoignie a celui de qi dowement etc.,[1] la partie [2] avera certein jour : quel cas est favorable.[3]

45. ANON.[4]

Processus calumpniatus.

Un bref fut porté vers Cristiene qe demanda la vewe. Et habuit. Le bref de vewe qe issit [5] fut ' habere facias Cristiane visum.' Après fut essonié et avoit jour etc. A quel jour ele vint en court et dit q'ele fut sanz jour, entaunt com ele avoit a noun Cristiene et le bref *de visu* voleit ' a Cristiane ' qe ne fut mye partie au play.[6] Et demanda coment ele devereit departir.[7]

Pass. Vous avez eu la vewe et pus essone et avez jour par essonour. Par qei [etc.].

Hedon ut prius.

Pass. graunta autrefoitz la vewe etc.

46. ANON.[8]

Finis de rente chargié sauntz attournement.

A. granta un rente chargé a B. en ceste manere : ' A. conust x. s. de rente [9] issaunt de une carué de terre [10] ove les appurtenances en N. estre le dreit N. et ceo a lui rendi en cest court a resceivre a lui et a ses heirs a touz jours.' Et pus *Launf.* pria bref a fere venir le tenant de attourner.

Ber. Par qei deust il attourner de ceste rente ? [11] Mès quel hure qe la rent soit arrere vous averez bref hors de ceinz [12] de lever la dite rente.

47. ANON.[13]

Pès trete et nent accepté en la manere.

Johan et Alice graunterent les tenemenz a Neel etc.[14] a tut sa vie a tenir de J. et A. et [15] des heirs A., rendaunt a J. et A.[16] un marc

[1] ele demaunde *B.* [2] ele *B.* [3] jour et ceo pur favour de douwere *B* ; jor in favorem dotis *X.* [4] Text from *M* : compared with *P*, *S*, *X.* [5] issint *M.* [6] pay *M* ; play *P.* [7] *In M and P the name appears as* (1) xpiene, (2) xpiane, (3) xpiene, (4) Crist' ; in *S* as (1) Cristiene, (2) Cristiane, (3) Cristiene, (4) Cristiene. [8] *Vulg.* p 57. Text from *M*: compared with *B*, *P*, *S*, *T*, *X.* [9] Un A. conust xl. s. de rente etc. *B.* [10] *Ins.* en Cestre *B.* [11] Ber. Vous naveretz pas *B.* [12] hors de la fin *B.* [13] *Vulg.* p. 57. Text from *M* : compared with *B*, *P*, *S*, *T*. Headnote from *B.* [14] *Om.* a . . . etc. *B.* [15] *Om.* de . . . et *B.* [16] a eus *B.*

endowment she claims, a day certain shall be given to the parties;[1] for [the widow's] is a favoured case.

45. ANON.

A name misspelt in a judicial writ.

A writ was brought against 'Cristiene,' who demanded a view. The demand was granted. The writ that issued for the view said 'habere facias Cristiane visum.' Then she was essoined and had a day etc. At that day she came into court and said that she had no day, inasmuch as her name was 'Cristiene' and the writ for the view spoke of 'Cristiana,' which was not the name of the party to the plea. And she asked in what wise she should depart from the court.

Passeley. You have had the view and then an essoin and you have a day by your essoiner. Wherefore etc.

Hedon repeated what had been said [for the tenant].

Passeley conceded a second view.

46. ANON.

When a rentcharge is the subject of a fine a writ to compel the attornment of the terre tenant will not be issued.

A. [in court] granted a rentcharge to B. in this manner: 'A. confesses ten shillings' worth of rent issuing from a carucate of land with the appurtenances in X. to be the right of B., and renders it to him in this Court, to receive to him and his heirs for ever.' And afterwards *Laufer* prayed a writ to make the tenant attorn.

Bereford, C.J. Why should he attorn for the rent? Whenever the rent is arrear you can have a writ out of this Court[2] to levy it.

47. ANON.

A fine by way of the grant of a life estate is refused because there is no preceding conusance of the right to the grantor.

John and Alice [in court] granted the tenements to Neel for his life to hold of John and Alice and of Alice's heirs, rendering to John

[1] So that no resummons will be needed. [2] Or 'out of the fine.'

par an a tute la vie J. et A. et les heirs J.[1] et A. garr[antireient] etc.[2]

Ber. Quel estat avez vous qe grantez ?

Wilb. Fee et dreit.

Ber. Ceo ne savoms mye sanz ceo q'il[3] vous eit[4] conue. Estre ceo, qui avera le marc après le decès A., qe il est possible qe Neel la survyve ?[5]

Wilb. Après le decès A. il serra esteint.

Ber. De qi tendra il[6] après la mort ?[7]

Wilb. Des heirs Alice a qi la reversion appent.[8]

Ber. Par queux services ?

Wilb. La pees etc. Neel conust le dreit a J. et A. et pur ceste recognisance J. et A. granterent[9] etc. a Neel etc. a tute sa vie, rendaunt a J. et A. a tut la vie A. un marc etc.[10] as heirs A. une rose par an, et[11] après le decès Neel qe les tenemenz retournent[12] as dreits heirs Alice a tenir de chief seignour[13] de fee a touz jours etc.

48. BATHELEYE *v.* THURGARTON (PRIOR OF).[14]

Replevine, ou le pere avoit doné au fiz partie du tenemenz q'il tient du chief seignour en fee taillé, a tenir de luy mesmes, et puis granta les services au chief seignour, et puis après la mort le pere le seignour avouwa en cel parcel pur l'entere de serviz de toz les tenemenz.

Un homme enfeffa son fitz eisné de partie de sa terre a lui et a ses heirs de son corps engendrez a tenir de lui par les services de xij. d. etc. Pus granta les xij. d. a chief seignour etc., par le quele grant le fitz se attourna etc. Pus le pere morust. Le fitz entra en le remenant del heritage dont son pere devia seisi. Et le cas fut tiel qe les tenemenz ent[iers][15] furent tenuz de chief seignour de fee[16] einz ceo q'il furent severez. Le seignour destreint[17] le parcele de tenemenz qe le fitz avoit par purchaz pur les services enterement, auxi com les tenemenz ne eussent esté severez. Et l'autre se pleint qe a tort prist ses avers etc. Et le seignour avowa la prise et en le lieu ou etc.[18] auxi com les tenemenz ne eussent unqes esté severez.[19]

[1] *Om.* J. *T.* [2] vie Alice et ses heirs Alice garr' *B.* [3] *Ins.* le *P.* [4] soit *B.* [5] qe A. survive Neel *B.* [6] ele *T.* [7] tendra Neel *B.* [8] *Om.* a . . . appent *B.* [9] grantent *S.* [10] et apres *B.* [11] *Om.* et *M*, *P*; *ins.* et *S*, *T.* [12] retornerent *P.* [13] seignorage *T.* [14] *Vulg.* p. 59. Text from *M*: compared with *B*, *P*, *S*. Headnote from *S*. [15] *Om.* entiers *B*; enterement *T.* [16] seigneur par un entier service *B.* [17] *Ins.* en *B.* [18] fit avowere pur lentier en le lieu come en parcele etc. *B.* [19] *Om.* auxi . . . severez *B.*

and Alice one mark every year during the life [of Alice, and] John and Alice and the heirs of Alice were to warrant etc.

BEREFORD, C.J. What estate have you who make this grant?

Willoughby. Fee and right.

BEREFORD, C.J. How are we to know that, as there is no conusance? Moreover, who is to have this mark after Alice's death? For it is possible that Neel will outlive her.

Willoughby. After her death it is to be extinct.

BEREFORD, C.J. Then of whom is he to hold after her death?

Willoughby. Of Alice's heirs, to whom the reversion belongs.

BEREFORD, C.J. By what services?

Willoughby.[1] The peace is this: Neel makes conusance of the right to John and Alice, and for this conusance John and Alice grant to Neel for his life, rendering to John and Alice during Alice's life one mark [every year], and after Alice's death rendering a rose every year to her heirs, and after Neel's death the tenements are to return to the right heirs of Alice to hold of the chief lord of the fee for ever etc.

48. BATHELEYE *v.* THURGARTON (PRIOR OF).

B, who holds Blackacre and Whiteacre of *A* by a single service, enfeoffs his (*B's*) son *C* in fee tail of Blackacre to hold of *B* by a rent. *B* then grants *C's* service to *A*, and *C* attorns. *B* dies, and *C* inherits Whiteacre. *Qu.* whether *A* can distrain in Blackacre for the whole service by which *B* held of *A*.

A man enfeoffed his eldest son of part of his land, to him and the heirs of his body begotten, to hold of [the donor] by the service of twelve pence etc. Then [the donor] granted the twelve pence etc. to the chief lord, and on this grant the son attorned. Then the father died. The son entered into the residue of the inheritance of which his father died seised. And the case was that the tenements before they were severed [by the father's gift] were held of the lord as one whole by one entire service. The lord distrained the tenements which the son had by purchase for the whole service just as if there had been no severance. The [son] complained of a wrongful taking of his beasts. The lord avowed the taking for the entire service and avowed it in the place [given to the son] just as if there had been no severance.

[1] Willoughby, as we understand, now proposes an amended form of the fine which is admitted as unobjectionable.

Herle. Il ne put ceste prise avower pur l'entier des services en cele parcele par cele avowerie etc. par la reson avantdite. Mès s'il veot avowerie fere en cele parcele pur xij. d. par an, la par aventure averoms autre voye a[1] pleder. Mès s'il ne veot ceo fere mès meyntener etc.,[2] nous demandoms jugement si en tel parcele pur l'entier pussez avowerie fere.

Wilb.[3] Sire il tent ceux tenemenz enterement de nous par les services etc.

Ber. R[esponez] si la tenance fut severé com il dit ou ne mye. Et si vous voillez conustre et estre a un de la tenance severee,[4] donqes purray vostre plè avoir issue en ley, scil. en jugement, le quel vous poiez avower ou ne mye etc., ou qe vous voillez dire[5] qe nent severee et issint poiez avoir issue en fet. Et pur ceo conussez si la tenance fut severé ou noun.[6]

Wilb. Nent severee. Prest etc.

Et alii e contra.[7]

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 325, Not.

John, Prior of Thurgerton, and John le Celreresman were summoned to answer William, son of Thomas de Batheleye, in a plea of replevin. The declaration is for taking a horse and two mares on [6 April, 1308] Saturday the vigil of the Palm Branches in 1 Edw. II. in the vill of Batheleye,[8] in the place called le Northcroft: damages, a hundred shillings.

The defendants come by William de Clyston their attorney. The Prior answers for both of them, and avows for the reason that the plaintiff holds a toft and bovate by fealty and the service of six shillings a year, whereof Alexander, a predecessor of the Prior, was seised by the hand of Thomas the plaintiff's father, whose heir the plaintiff is; and for the service of six shillings arrear for sixteen years the taking was made.

The plaintiff says that the Prior cannot avow the taking lawful in the said place for the entirety of the service, for one William de Bathele, grand-

49. ANON.[9]

Wast, ou piert qe home avera tiel bref auxi bien de wast fait en dower et de exil qe en altre cas.

Un homme porte soun bref de wast vers une femme qe tient en dowere, et counta de wast et de exil fait de gentz.

[1] de *T.* [2] *Om.* Mes . . . etc. *B.* [3] *Om.* this speech *B.* [4] *Om.* severee *B.* [5] ou dites *B.* [6] *Om.* Et . . noun *B.* [7] *Om.* sentence *B.* [8] Bathley, a little north of Newark. [9] Text from *A*: compared with *D*, *M*, *P*, *Q*, *S*, *T*.

Herle. He cannot, for the reason already given, avow for the whole service in this parcel by this avowry. If he wishes to avow in this parcel for the twelve pence a year, then perhaps we might have to plead in a different way. But if he will not do that and desires to maintain [his present avowry], we pray judgment whether he can avow for the whole in this parcel.

Willoughby. Sir, he holds the whole of the tenements of us by the services etc.

Bereford, C.J. You must answer whether or not the tenancy was severed as he says. Then, if you confess and are at one about the severance, your plea can have an issue in law, namely, in a judgment as to whether you can or cannot avow. On the other hand, if you deny the severance, you can have an issue in fact. So confess whether the tenancy was severed or not.

Willoughby. Not severed. Ready etc.

Issue joined.

Note from the Record (*continued*).

father of the plaintiff and father of Thomas, enfeoffed Thomas of the toft called Northcroft, wherein [the taking was made], to hold to Thomas and the heirs begotten of his body, of William and his heirs, by the service of twelve pence a year for all service, and afterwards enfeoffed him (Thomas) of the said bovate, to hold of William and his heirs, by the service of five shillings, and afterwards granted the whole service of Thomas for the said tenements to Prior Alexander to hold of him and his successors in the form in which he held them of William[1]; and this he is ready to aver; and thereof he prays judgment.

The Prior says that the plaintiff holds of him the toft and bovate by the service of six shillings as one entire service, and that Prior Alexander was likewise seised of the same service of six shillings for the entirety of the said tenements by the hand of Thomas; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the quindene of Easter. There is a subsequent adjournment to the octave of Michaelmas.

49. ANON.[2]

Tenant in dower can be made to answer for exile of folk as well as for waste, although such exile is not mentioned in Stat. Glouc. c. 5.

A man brought his writ of waste against a woman who held in dower and counted of waste and of exile of the folk.

[1] Apparently this means that William granted Thomas's service to the Prior in such wise that *Thomas* was to hold *the tenements* of the Prior and his successors in the form in which he had theretofore held them of William.

[2] This case is Fitz., *Wast*, 2.

La femme, qe nul wast ne exil de gentz ne fist se mist en pays. Bref issit a vicounte d'enquere del wast. Il retourna le verdit del enqueste [1] qe wast et exil fust fait.

Malm. C'est un bref doné par Statut de Gloucestre, le quel Statut ne fait pas mencioun mès de wast et nul mencioun ne fait de exil, et prioms qe le jugement ne se face nent plus largement [2] qe l'actioun n'est doné par Statut.

Et hoc non obstante, le jugement se fist auxi bien pur le exil com pur le wast.[3]

50. WESTLEY *v.* FULEWELLE.[4]

Rescous, ou piert qe le bref g[ist cum] *de averiis rescussis*, la il soy pleint de owes : ou s'il firent [5] my damage jeo ne poay faire rescus.

A.[6] se pleynt qe R. a tort rescoust ses avers nomement ij.[7] owes et x. aues.

Roston. Jugement de la variaunce entre soun bref et soun counte, qe soun bref veot des averes, et il counte des owes et des aues, les queux sount pas averes etc.

Hervi. Il ad servi soun bref, et tot voleit il avoir porté soun bref 'quod rescussit aucas suas' il n'avereit nul tiel bref en la chauncelerie.

Roston. Il ne feserent nul damage [8] par quei nous ne porroms [9] nul rescusse fair. Prest etc.

Et alii econtra.

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 208, Suff.

Roger Fulewelle was attached to answer Adam, son of John de Westle, in a plea why, whereas the plaintiff had taken the beasts (*averia*) of the defendant at Westle, and would have impounded them, the defendant, with force and arms, rescued those beasts, and other enormities to him did, against the peace. The declaration states that whereas at Westle on [4 September, 1308] the Wednesday next after the Decollation of St. John, in 2 Edw. II., the plaintiff had taken fourteen geese and ten ducks in his damage—to wit, depasturing and downtreading his barley—and would have

[1] *Ins.* en baunc a xv. de Seint Hillaire *M*, *P*, *T*. [2] large *T*. [3] *Ins.* par Ber. *M*, *Q*; par Bereford *P*. [4] Text from *A* : compared with *D*, *Q*. [5] fir' *A*. [6] Un Adam *D*, *Q*. [7] x. *D*, *Q*. [8] demande *D*, *Q*. [9] porreioms *D* ; porreiomes *Q*.

For the woman it was said that of no waste or exile of folk had she been guilty, and she put herself upon the country. A writ issued to the sheriff to inquire of the waste.[1] He returned the verdict of the inquest that there had been waste and exile.

Malberthorpe. This is a writ given by the Statute of Gloucester,[2] which only mentions waste and not exile. We pray that the judgment be not in larger terms than the action that is given by Statute.

None the less, the judgment was given as well for the exile as for the waste.

50. WESTLEY *v.* FULEWELLE.[3]

Geese and ducks are 'beasts' within the meaning of a writ of rescue. *Semble* that there is no 'rescue' if the beasts distrained as damage feasant were doing no damage.

A. complains that R. wrongfully rescued his beasts, to wit [fourteen] geese and [ten] ducks.

Ruston. Judgment of the variance between his writ and his count; for his writ says 'beasts,' and he has counted of geese and ducks, which are not beasts.

Stanton, J. He has kept to his writ. If he had wished to bring a writ for the taking of 'his geese,' he could not have had such a writ in the Chancery.

Ruston. They were doing no damage,[4] so we could not be guilty of a rescue. Ready etc.

Issue joined.

Note from the Record (*continued*).

impounded those 'beasts (*averia*)' according to law and custom, the defendant, with force and arms, rescued those geese and ducks. Damages are laid at a hundred shillings. The defendant denies the rescue ('bene defendit quod ipse nuncquam predictis die et anno aucas seu anates ipsius Ade rescussit contra pacem sicut idem Adam ei imponit et de hoc ponit se super patriam'). Issue is joined, and a *venire facias* is awarded for the octave of the Purification. The record shows no trace of the objection that ducks and geese are not beasts. The defendant's simple traverse of the plaintiff's declaration is hardly what the report would have led us to expect.

[1] Under Stat. Westm. II. c. 14.
[2] Stat. Glouc. c. 5.
[3] Proper names from the record.
[4] Some books say 'They made no demand.' The record does not bear out either version of this issue.

51. ACCLUM *v.* CARPENTER.[1]

Cui in vita, ou piert qe le bref gist pus l'encourounement.

Une femme porta la *cui in vita* vers [2] un tenaunt, Nichol par noun, et dit q'une sa auncestre S. par noun [3] fust seisi en temps de pees, en temps le Roi H., ael le Roi q'ore est, et qe soun baroun aliena, a qi ele etc. countredire ne pout.

Clav. Cesti bref est doné par Westmoustier Secounde [4] fait en temps le Roy E., et vous demaundez de la seisine vostre auncestre en temps le Roi H., q'en ceo temps ne fust mye remedie ordiné [5] par cesti bref,[6] einz par le bref de dreit. Jugement, si par cesti bref etc.

Hedon. C'est un bref d'entré et [7] est lymité del corounement le Roi H., et statut suppose q'au temps qe [8] le bref issit etc. Jugement si cesti bref ne gise.

Berr. Nous vous dioms qe le bref i gise.[9] Par qei responez.

Roston. Nous demaundoms la vewe. (Et habuit.)

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 284, York.

Robert de Acclum, by Thomas Bret, his attorney, demands against Peter, son of Adam le Carpenter de Seterynton, a messuage in Galineton [10] as his right and inheritance, and into which Peter has no entry save after the demise which Henry, son of Ralph, sometime husband of Agnes of Acclum, cousin of the demandant, whose heir the demandant is, whom [Henry] in his lifetime she [Agnes] could not contradict, made to Roger, son of Baldwin. The count states that Agnes was seised in her demesne as of fee in time of peace, in the time of Henry III., taking esplees, etc.; and that from her, since she died without an heir of her body (*de se*), the right descended to one Geretruda as sister and heir, and from her to one Robert as son and heir, and from him to one Nicholas as son and heir, and from him to the demandant as son and heir. (*Note continued on the opposite page.*)

[1] Text from *A*: compared with *D*, *Q*. [2] Un cui in vita fust porte vers *Q*. [3] *Ins.* qe *A*. [4] par Statut de Glouc' *Q*. [5] *Ins.* pur le heir *Q*. [6] *Ins.* etc. *and end speech D*. [7] *Om.* et *A*. [8] qaunt *Q*. [9] giste *Q*. [10] Or Galmeton. The places seem to be Acklam, Settrington, and Ganton.

51. ACCLUM *v.* CARPENTER.[1]

Counsel attributes a statutory origin to the *cui in vita*.

A woman brought the *cui in vita* against a tenant called Nicholas, and said that an ancestor of hers, one S. by name, was seised in time of peace in the time of King Henry, grandfather of the king that now is, and that her [the demandant's] husband, whom she could not contradict, alienated.

Claver. This writ is given by [the Statute of] Westminster the Second[2] made in the time of King Edward, and you demand upon the seisin of your ancestor in the time of King Henry; but in that time no remedy by this writ was ordained, but [the widow or the wife's heir was put to a] writ of right. Judgment, whether by this writ etc.

Hedon. It is a writ of entry and the coronation of King Henry is the limitation, and the Statute supposes that the writ was current [when the Statute was made].[3] Judgment, whether this writ does not lie.

Bereford, C.J. We tell you that the writ lies.

Ruston. We demand a view. (He had it.)

Note from the Record (*continued*).

Peter, by John de Skelton, his guardian, after formal defence, says that Agnes was not seised in her demesne as of fee in the time of the said King Henry, etc., as the demandant supposes, etc.; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the morrow of the Purification.

If this is the reported case, an attempt to simplify the facts has been made by the reporter. An action *sur cui in vita* by the heir of the wife is converted into an action *cui in vita* by a widow.

[1] These names from a record which may perhaps be that of the reported case.

[2] One book says 'of Gloucester.' Probably the reference was to Stat. Westm. II. c. 40. Coke, Sec. Inst. 343, has noticed and rightly controverted an opinion that the *cui in vita* was a novelty in Edward II.'s day.

[3] An endeavour to expand an unfinished sentence. Stat. Westm. II. c. 40 supposes that there already is a writ for the widow and for the heir.

52. ANON.[1]

Accompte, ou piert si home viegne par le *capias* il trovera swerté d'atendre l'enquest.

Un *precipe quod reddat compotum.* Le defendaunt pleda al enqueste et dit q'il ne fust point soun baillif; et pur ceo q'il vint après ceo qe le *capias*[2] fust agardé, il trova[3] surté de attendre l'enqueste.

53. ANON.[4]

Fol naistre.

Nota, la ou un enfaunt dedenz age est fol nastre, le Roi avera la garde tote sa vie etc. Mès s'il soit lunatick il n'avera point: par *Berr.*[5]

54. LANGLEY (ABBOT OF) *v.* SUTHMERE.[6]

Intrusioun après la mort un tenaunt en dower de assignement: ou piert q'il est bone traverse a dire q'il atorna point par my le graunt.

Un Priour porta bref de intrusioun vers un P., et counta qe la reversioun des tenemenz qe un femme tent en dowere fust graunté a luy,[7] par quele graunte la femme se atorna, et il se abatist après la mort mesme cele femme.

Toud. P. vous dit q'il n'ad reins en ceaux tenemenz si noun a terme de vie du lès etc., et prioms eyde etc.

Hedon. Eide ne devetz avoir, qar eide prier countrevalt un vowcher. Mès si vous vowchez vous ne serret pas r[eceu], pur ceo qe ceo est de vostre tort demeigne.

Et fust ousté de l'un et de l'autre.

Toud. La femme ne se[8] atorna unqes al Prior. Prest etc.

Et alii econtra.

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 387d, Norf.

Ralph, Abbot of Langley, by his attorney, demands against John de Suthmere and Isabel, his wife, four messuages, twenty acres of land, three

[1] Text from *A*: compared with *D*, *Q*. [2] qil ne vont point qe le capias *D*; qil ne vynt poynt par le cape *Q*. [3] qil trovast *Q*. [4] Text from *A*: compared with *D*, *Q*. [5] *Om.* par Berr. *D*. [6] Text from *A*: compared with *D*, *Q*. [7] furent grauntetz a G. *Q*. [8] sa *A*.

52. ANON.

Security to abide the inquest in an action of account.

In a writ of account the defendant pleaded to the inquest, saying that he was not the plaintiff's bailiff. And since he did not appear until the *capias* was awarded, he had to find security to abide the inquest.

53. ANON.[1]

Born fools and lunatics.

Note that if an infant under age is a born fool, the King shall have a wardship all his life; but it is not so in the case of a lunatic: per Bereford, C.J.

54. LANGLEY (ABBOT OF) *v.* SUTHMERE.[2]

In a writ of intrusion the tenant, if charged with being the first to abate, can neither vouch nor pray aid. If the action is by the grantee of the reversion, *semble* that the attornment of the particular tenant is traversable.

A Prior brought a writ of intrusion against one P. and counted that the reversion of tenements held by a doweress was granted to him, and that the doweress attorned herself on this grant, and after her death P. abated.

Toudeby. P. says that he has nothing in these tenements but for term of life by the lease of [X.] and he prays aid [of X.].

Hedon. Aid you ought not to have, for aid-prayer is equivalent to voucher. But if you vouched you would not be received, for [the alleged abatement] is your own tort.

[The tenant] was ousted from both [aid-prayer and voucher].

Toudeby. The [doweress] never attorned to the Prior. Ready etc. Issue joined.

Note from the Record (*continued*).

of meadow, and three of pasture in Tutington[3] as the right of his church of B. Mary de Langele, and into which Isabel has no entry save by (*per*) Thomas de Wyghton, to whom (*cui*) Henry de Hastinges demised them,

[1] This case is Fitz., *Garde*, 5.
[2] This case is Fitz., *Ayde*, 162. Proper names from the record.
[3] Mod. Tuttington.

Note from the Record (*continued*).

who intruded himself into them after the death of Maud, sometime wife of Peter de Hauboys, who (Maud) held them in dower of Simon, Abbot of Langley, the demandant's predecessor, by the gift of Peter, her late husband, on the assignment of Walter de Thurkelby, brother and heir of Thomas of Thurkelby, of whom Maud held those tenements in dower on the assignment of Peter, son and heir of Peter, her late husband, and which after her death ought to revert to the demandant by the form of the assignment which Walter made to Abbot Simon.[1]

John and Isabel come by their attorney, and, after formal defence, say that the demandant can claim no right by reason of the alleged assignment to Abbot Simon made by Walter, of whom, as the demandant asserts, she

55A. GOLDINGTON *v.* BEREWYSE.[2]

Dette: ou piert qe defendaunt, ou bref judiciel chalaungé, n'abatera mye l'original.

William de Goldyngtone porta soun bref de dette vers H. et demaunda viij.[3] marks et une robe, pris de deus[4] marks.

Roston. Sire, nous sumes venuz par la graunt destresce, et le bref par qei nous avoms[5] jour ne parle fors d'une dette de viij. marks, par qei nous entendomps qe le plee est discontinué, et n'entendomps mye qe nous avoms jour a ore a[6] cesti bref.

Hervi. Si vous fusset en plee de terre vous deisset bien, mès ore estes vous en plee de dette. Par qei responez[7] si vous voletz.

Lambert. Ceste omissioun n'est a chalaunger si noun a la court, par qei de choce dount court ad fait omissioun ne serra prejudicial a la partie. Par qei etc.

Roston. Il ad counté solonc l'original et demandé viij. marks et une robe, et si jeo pusse moustrir qe le plee est discontinué il me semble qe jeo su sauntz jour. Et nous vous dioms[8] qe en dreit du bref de la graunt destresse, par vertu de quel bref nous avoms jour a ore, n'ad il nul mencioune fait de la robe. Jugement etc.

Berr. Volez vous avoir jugement d'un bref de jugement ?[9] Vous estes osté par[10] curt. Et veez ici l'original qe parle de viij. mars et de la robe. Par quai responez[11] a vostre fait si vous voletz.

Roston. Ceo fait fust fait taunqe com[12] nous sumes dedeinz age. Prest etc.

[1] Apparently Maud held of Peter, son of Peter; he assigned to Thomas, and then Walter, heir of Thomas, assigned to Abbot Simon. [2] Text from *A*: compared with *D*, *Q*. [3] vj. *Q*. [4] viij. *Q*. [5] *Ins.* br[ef] *A*; *om. Q*. [6] par *D*. *Q*. [7] respoignetz *Q*. [8] Et vous dites *Q*. [9] avoir del bref. jug. de jug. *Q*. [10] en *Q*. [11] respoignetz *Q*. [12] tant com *D*, *Q*.

Note from the Record (*continued*).

held in dower; for Maud never attorned to Abbot Simon, and this they are ready to aver.

The demandant says that at Lodne,[1] in the said county, Maud attorned to Abbot Simon for the tenements, and did fealty; and he prays that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded from the venue of Lodne for a month from Easter.

There is sufficient resemblance between the report and the record to make it desirable that they should be printed together; and yet it is difficult to see how in the recorded case the tenants in the action could have been charged with being the first to abate.

55A. GOLDINGTON *v.* BEREWYSE.[2]

Variance between the original writ and the mesne process.

William of Goldington brought his writ of debt against H., and demanded [seven] marks and a robe of the price of [six] marks.

Ruston. We have come here upon the great distress, and the writ which gives us the day speaks only of a debt of [seven] marks, and therefore we understand that this action is discontinued, and that we have no day now for this writ.

Stanton, J. If you were in an action for land, what you say would be true; but here you are in an action of debt. So answer, if you please.

Trikingham, J. This omission can only be charged against the Court. An omission made by the Court shall not be prejudicial to the party. Therefore etc.

Ruston. He has counted according to the original writ, and demanded [seven] marks and a robe; and, if I can show that the action is discontinued, it seems to me that I am without day. And we tell you that in the writ for the great distress, by virtue whereof we have the present day, there is no mention of the robe. Judgment etc.

Bereford, C.J. Would you ask for judgment of a judicial writ? You are ousted by the Court [from your objection]. And look here at the original writ, which mentions [seven] marks and a robe. So answer to your deed, if you please.

Ruston. The deed was made while we were under age. Ready etc.[3]

[1] Loddon lies close to Langley. [2] This case is Fitz., *Briefe*, 784. Proper names from the record. [3] Another report of this case follows.

55B. GOLDINGTON *v.* BEREWYSE.[1]

Un homme porta son bref de dette vers un autre et demanda vij. mars et une robe.[2] Et la partie[3] vint en court par la grant destresce qe fit soulement mencion de les vij. mars.[4] Par qei il disseint qe qaunt a la roube il furent sanz jour, qe[5] le plè ne fut nent continué.[6] Non obstante il fut chacé a respondre, et dit qe le fet fut fait taunt com il fut deinz age, quel fet il mist en prove. Et les autres le revers.

Note from the Record.

De Banco Roll, Michaelmas, 3 Edw. II. (No. 179), r. 310, Westmor.

Alexander de Berewyse is summoned to answer William de Goldington in a plea that he render seven marks, which he owes and unjustly detains, and one robe, price six marks, which he unjustly detains. The count says that at Appleby on [26 January, 1307] Thursday next after St. Vincent the Martyr, in 35 Edw. I., the defendant, by a writing, confessed himself bound in the seven marks and the robe to be paid at Pentecost next. The writing is produced, and damages are laid at ten pounds. (*Note continued on the opposite page.*)

56. NOTA:[7]

(I.) Nota que en un bref de meen porté vers un homme et sa femme com du droit la femme le bref deit dire ‘ de libero tenemento quod de prefatis tenet etc.’ et nomer le baron et la femme, ‘ et unde media est etc.’ saunz nomer le baron ‘ et eum aquietare debet etc.’ ‘ et unde queritur quod pro defectu ipsorum distringitur etc.’

(II.) Nota qe en un bref de ravissement de garde foundé sur le statut de West[moustier] seconde fust agardé bon, que voleit ‘ quare talem heredem etc. vi et armis rapuit etc.’ Et le statut ne fust[8] mye le ‘ vi et armis.’ Mès en mesme le cas et en mesme l’an autiel bref fust deux foiz abatu par mesme la reson etc.

(III.) Nota que en un bref de forme de doun en le *reverti* fust agardé bon, que voleit ‘ et que post mortem predictorum A. et B. et C. fil[ii] et hered[is] predictorum A. et B. predicto etc. reverti debet etc.’ ou le fitz fust entré en religioun. Et fust challengé, que le mordancestre en tiel cas fet mencioun ‘ die quo habitum etc.’ Donerent tiel bref ‘ et que post mortem predictorum A. et B. et professionem C. filii et heredis etc.’ Et non allocatur etc.

[1] *Vulg.* p. 57. Text from *M*: compared with *B*, *P*, *S*, *T*. [2] vj. mars etc. *M*; vij. marcz et une robe *B*. [3] Et le deffendant *B*. [4] qe ne fit pas mencion de la robe *B*. [5] jour qar en droit de ceo *B*. [6] fust discontinue. Hoc *B*. [7] Text from *L*. [8] *Corr.* ne veot (?).

55b. GOLDINGTON *v.* BEREWYSE.

A man brought his writ of debt against another, and demanded seven marks and a robe. And the [defendant] came into court by the great distress, which only made mention of the seven marks. So they said that as to the robe they were without day, for the plea was discontinued. Nevertheless, he was driven to answer, and he said that the deed (which was produced to prove the debt) was made while he was within age. On this issue was joined.

Note from the Record (*continued*).

The defendant comes by Robert de Sandford, his attorney, and cannot deny that the writing is his deed, but says that he ought not to be thereby bound to render the said debt, for at the time of its making he was within age, and this he is ready to aver.

The plaintiff says that at the time of the making of the writing the defendant was of full age, and prays that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded for the quindene of Hilary.

56. NOTES ON VARIOUS WRITS.[1]

(I.) A writ of mesne brought against husband and wife as of the wife's right should say 'of the free tenement which he holds of the said husband and wife (naming them), and as to which she (not mentioning the husband) is mesne and ought to acquit him, and concerning which he complains that by their [not *her* or *his*] default he is distrained etc.'

(II.) A writ of ravishment of ward founded on the Statute of Westminster II. was awarded good, though it said 'why with force and arms he ravished a certain heir,' and the Statute does not speak of force and arms. But in like case and in the same year a similar writ was twice abated for this reason.

(III.) A writ of formedon in the reverter was awarded good, though it said 'and which after the death of A. and B., and of C. the son and heir of the said A. and B., ought to revert to the said etc.,' and the son had entered religion. It was objected that in like case the writ of mortdancestor has 'on the day on which he [the ancestor] took the [monastic] habit etc.'; and [the tenant's counsel] suggested as the proper form 'and which after the death of the said A. and B., and the profession of C. son and heir etc.' But the objection was overruled.

[1] These notes are found in one of our manuscripts.

PLACITA DE TERMINO S. HILLARII ANNO REGNI REGIS EDWARDI FILII REGIS EDWARDI TERCIO.

1. GYSE *v.* BAUDEWYN.[1]

Abette, ou il counte du plus qe ne fust taxé par l'enqueste etc. et agardé bone.

Johan de Gise[2] porta soun bref de abettement[3] vers C. Lambekin,[4] et dit q'il abetta une Alice qe fust la femme etc. fausement et maliciousement d'apeler mesme cesti Johan de la mort un P. etc., par resoun de quel appel il fust enprisoné etc. taunt q'il fust aquité devaunt les justices le Roy a la seute le Roy si qe l'appel fust abatu.[5]

Pass. Bref de abette[6] est doné par ley especial[7] la ou l'appelour n'est mye[8] suffisaunte, q'est cause de sa actioun etc. Jugement du counte.

Spig.[9] Si ele eust esté suffisaunte nous n'ussoms mye enquis des abettours ne bref issu[10]; par qei ceo qi est recordé en court ne covent mie dire en countaunt.

Pass. Jugement unqore de bref, qe ceo bref est doné a recoverir dammages taxés par agarde, et les damages sount taxés forsqe a c. liv., et il ad counté de ses damages de m. liv. Jugement etc.

Rob.[11] Coment qe les damages sount taxés par agarde, ceo n'est forsqe par enqueste d'office par statut. Mès statut nous[12] doune mye q'il counte[13] de ses damages acordaunt a la sume des damages taxés par agarde. Par qei etc.

Pass. Les damages sunt mys en certeyn, outre quel certeynté il ne puit damages recoverer, et par consequent le damage mauveys. Item[14] de meillour condicioun n'est il vers nous q'il ne serreit vers

[1] Text from *A*: compared with *D*, *Q*, *S*, *T*. [2] Gyse *Q*; Gysse *S*; Gisse *T*. [3] abette *Q*, *S*. [4] Baudekyn *Q*; Thomas Baudewyne *S*, *T*; Landekyn *D*. [5] eo quod appellum prostratum etc. *S*, *T*. [6] Bref dappel *Q*. [7] par statut *S*, *T*. [8] *Ins.* suffisaunt a les damages etc. et il nad pas dit en contant qil ne fut pas *S*, *T*. [9] *Ins.* Justice *S*, *T*. [10] isse *Q*; issi *S*, *T*. [11] Roub. *D*, *Q*; Roudb. *S*, *T*. [12] ne *S*, *T*. [13] deit counter *Q*, *S*, *T*. [14] *Om.* Les damages sunt . . . item *A*, *D*, *Q*; *ins.* *S*, *T*.

PLEAS OF HILARY TERM IN THE THIRD YEAR OF KING EDWARD II. (A.D. 1310).

1. GYSE *v.* BAUDEWYN.[1]

In counting on a writ of abetment it is unnecessary to allege the insufficiency of the appellor, and the plaintiff is not confined to demanding such damages as were assessed by the inquest of office.

John de Gyse brought his writ of abetment against T. Baudewyn, and said that he abetted Alice, sometime wife of [one B.], falsely and maliciously to appeal this John of the death of B. etc., by reason whereof he was imprisoned etc. until he was acquitted before the King's justices at the King's suit, the appeal having been abated.

Passeley. The writ of abetment is given by special law,[2] in case the appellor is not sufficient to make satisfaction, and this insufficiency is the cause of action. Judgment of the count.

Spigurnel, J. If she had been sufficient, we should not have made inquest as to the abettors, nor would this writ have issued; and it is needless to state in counting what has been recorded in court.

Passeley. Once more we demand judgment of the writ, for this writ is given to recover the damages taxed by the judgment; and here the damages were taxed at only a hundred pounds, and in his count he has laid damages at a thousand. Judgment etc.

Roubury, J. Although damages have been taxed by judgment, that was only upon an inquest *ex officio* under the Statute. But the Statute does not say that [against the abettor] he must count for that sum of damages which has been taxed by the judgment. Wherefore etc.

Passeley. The damages have become a matter of certainty, and beyond that certainty he cannot recover, so his claim for damages is bad. Also he is in no better position against us than that in which

[1] This case is Fitz., *Accion sur lestatut*, 28. Proper names from the record.

[2] Stat. Westm. II. c. 12.

l'appeleresce, mès vers lui ne pount il counter ne damages recoverir de plus qe n'est taxé par agarde de court.

Et hoc non obstante le bref et le counte fussent agardetz bons.[1]

Note from the Record.

Coram Rege Roll, Hilary, 3 Edw. II. (No. 199), r. 82d, Norf.

Thomas Baudewyn was attached to answer John de Gyse why he, with William brother of Brice de Burwode, Richard son of William de Burwode, John la Warre, and Gerard de Braybrok, knight, falsely and maliciously abetted Alice, sometime wife of Brice de Burwode, to appeal the plaintiff of the death of Brice, whereof the plaintiff, in the court of the King before him (*in curia Regis coram eo*) went quit by an inquest of the country on which he had put himself at the King's suit. The declaration states that Thomas and the others on [3 Oct. 1308] Thursday next after Michaelmas in 2 Edw. II. falsely and maliciously abetted Alice at Netesherde[2] in Norfolk to appeal the plaintiff of the death of Brice her late husband, by which abetment the plaintiff at the suit of Alice came here in court on [12 Nov. 1308] the morrow of Martinmas then next and rendered himself to the

2. HEREFORD *v.* HEREFORD.[3]

Scire facias : ou piert qe la party avendra poynt a dire qe l'execucioun fust pas fait encountre fyn sour rendre et bref swi et retourné. Respice : ou piert qe verdit puist estre ateynt par recorde.

Margerie qe fust la femme Johan de Hereforde porta le *scire facias* vers Thomas le fitz Johan,[4] et pria execucioun d'un mees en H.[5] par la reconisaunce[6] d'une fine qe se leva entre Nichol de Hereforde pleintif et Johan et M. sa femme deforciaunts etc.[7] de ij. mies et de taunt de terre en Stauntone et en H.,[8] par quel fyn il conisent les tenemenz estre le dreit Nichol, et pur ceo reconisaunce N. graunta les tenemenz et rendi a Johan et a M.[9] et a les heirs etc.

[1] *Ins.* par Roubyry et Spigurnel *D*, *Q*, *S*, *T*. *Add* Toud. tamen in contraria opinione existente *T* ; *sim. S*. [2] Mod. Neatishead. [3] Text from *A* : compared with *D*, *Q*. [4] J. de Hereforde *D*, *Q*. [5] Hereforde *D*, *Q*. [6] r[eson] *Q* ; raison *D* [7] entre Nichol de Hereford et Margerie sa femme defendauntz *Q* ; *sim. D*. [8] Hereforde *Q*. *and so throughout*. [9] Margerie sa femme *Q*.

he would be against the 'appelleress'; but against her he could not count for or recover more damages than were taxed by the award of the Court.

None the less, writ and count were adjudged good.[1]

Note from the Record (*continued*).

King's prison and was therein detained until [1 July 1309] the octave of St. John Baptist then next, when he went quit by an inquest of the country, on which he had put himself for good and ill at the King's suit. Damages are laid at a thousand pounds.

Thomas, after formal defence of force and tort and all that is against the Statute, says that he did not maliciously abet Alice to appeal the plaintiff of the said death, as the plaintiff complains; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for three weeks from Easter. It appears from the roll (r. 82d, 88d) that Thomas Baudewyn and others have to answer some fifteen other actions based upon appeals brought by Alice for the death of her husband against various persons, who are the plaintiffs in these actions.

2. HEREFORD *v.* HEREFORD.[2]

A fine *sur conusance* with grant and render to the conusor is levied. A writ of execution is issued and returned. *Semble* that a party thereto cannot by a *scire facias* for execution raise the question whether the fine has been duly executed. *Qu.* whether in a grant 'two houses in *X* and *Y*' must mean one house in *X* and another in *Y*.

Margery, sometime wife of John of Hereford, brought the *scire facias* against Thomas, son of John of Hereford, and prayed execution of a messuage in Hereford on the conusance in a fine levied[3] between Nicholas of Hereford, plaintiff, and John and Margery his wife, deforciants, of two messuages and so much land in Stanton and in Hereford, whereby [John and Margery] made conusance that the tenements were the right of Nicholas, and for that conusance Nicholas granted and rendered the tenements to John and Margery and to the heirs of [Margery].[4]

[1] Some add 'by Roubury and Spigurnel; but Toudeby was of the contrary opinion.'

[2] Proper names uncertain.

[3] Or 'by reason of a fine.'

[4] From what follows it seems likely that a writ for the execution of the fine had been issued.

Toud.[1] Auxi avaunt com N. rendist a J. et M. la fine est execute.

Herle. Seoms primes a un qe ceo mies en H. est contenu en la fine.

Friss. La fine se leva de ij. mies en H. et en S.; dount nous dioms qe la fine est execute etc. le quel est contenu en la fine. Estre ceo, si[2] jeo porte moun bref de xx. acres de terre en ij. villes, et la terre soit tot en une ville, le bref est asset bon. Sic hic de puis qe la fine se leva de ij. mies en H. et en[3] S., et il sount ij. mies en[4] S. et rien en aultre, et nous voloms averir qe la fine est execute, et ceo nous suffit.

Brabazoun. Si la fyn se leva de ij. mies en H. et en S., et soient ij. mies en l'une ville et ij.[5] en l'autre,[6] execucioun se doit fair de l'un mies en l'une ville et de l'autre en l'autre ville.

Fris. Si il ad ij. mies en l'une ville dount par cas la fine est execut, il ne doit de[7] nient plus avoir execucioun par la resoun avauntdit; qe s'il eust, issi ensuereit q'il averoit execucioun de iij. mies la ou il ad[8] contenu en la fine forsqe ij., qe serroit encountre ley.

Herle. Pledez a nous si le mees soit contenu en la fine ou noun.

Friss. Auxi pleignement com N. fust seisi et rendist etc. la[9] fine est execut. Prest etc.

Brab. Nous tenoms l'estat N. asset certeyn, et sa seisine suppose qe sa conissaunce faite a J. etc.[10]; issint, mesqe vous vousisset dire qe N. n'avoit unqes rien, vous ne serretz mye receu a ceo. Aloms[11] al estat J. qe seisine est supposé[12] par le rendre N.[13] par le bref qe fust suy et par la fyn execut; issint, mesqe vous vousisset dire q'il n'avoit unqes execucioun, vous ne serrez pas receu a ceo, qe la fine prove le contrarie. Par qei par cesti bref ne poetz estre aidé, einz eietz vostre recoverir par assise et par reddiseisine si vous seietz[14] osté, qe si vous porte[15] l'assise et le tenaunt dit[16] qe vous ne fustes unqes seisi issint qe vous porrez estre diseisi, et vous meisset avaunt partie de la fine, il n'avendroit mye d'averer par assise qe vous ne fustes unqes seisi etc., pur ceo qe la fine prove[17] vostre dit par ceste paroule qe N. graunta et rendist et bref suyst etc.[18] Et[19] mesqe vous ne

[1] Toud. Frs. Malm. pur Thom. lefitz. disoient qe *Q*; *sim. D.* [2] Frs. Si (*beginning a new speech*) *Q*; *sim. D.* [3] *Om.* en *Q.* [4] *Ins.* la ville *D*, *Q.* [5] et un autre *Q.* [6] *Ins.* ville *and om. rest of speech Q.* [7] *Om.* de *D.* [8] il ni ad *D.* [9] rendi a J. sa *Q.* [10] la conis' J. etc. *Q.* [11] my r[ece]u qar aloms *D.* [12] J. qi seisine suppose *Q*; J. qi suppose *D.* [13] *Ins.* etc. et *Q.* [14] fuissetz *Q.* [15] portastes *D*, *Q.* [16] *Ins.* etc. *Q.* [17] *Om.* prove *A.* [18] *Om.* et vous meisset . . . etc. *Q.* [19] *Om.* Et *Q.*

Toudeby.[1] In so far as Nicholas rendered to John and Margery, the fine is already executed.

Herle. First let us agree that this messuage at Hereford is comprised in the fine.

Friskeney. The fine was levied of two messuages in Hereford and Stanton, and we say that, whatever tenements be comprised in the fine, the fine is executed. Besides, if I bring my writ for twenty acres of land in two vills, and the land is all in one vill, the writ is good enough. So it is here, for the fine was levied of two messuages in H. and in S., and there are two messuages in S. and none in H.; and we will aver that the fine is executed, and that is good enough for us.

Brabazon, C.J. If the fine is levied of two messuages in H. and in S., and there are two messuages in the one vill and two in the other, the execution ought to be made of one messuage in the one vill and one in the other.

Friskeney. If there are two messuages in the one vill, then peradventure the fine is executed of these two, and then for the reason aforesaid he ought not to have any further execution; for, if he have it, then it would follow that he would have execution of three houses, whereas only two were comprised in the fine, and that would be against law.

Herle. Was this house contained in the fine? Plead to that question.

Friskeney. Just in so far as Nicholas was seised and rendered etc., just to that extent the fine is executed.

Brabazon, C.J. We hold Nicholas's estate to be certain enough, and his seisin is supposed by the conusance made [by John and Margery to him]; so, even if you desire to say that Nicholas never had anything, you shall not be received to that averment. Let us now go on to the estate of John. His seisin is supposed by Nicholas's render and by the writ which was sued for the execution of the fine. So, even if you wished to say that he had no execution, you would not be received to that, for the fine proves the contrary. Therefore you cannot be aided by this writ, but may have your recovery by the assize [of novel disseisin], and, if you are ousted, then by [writ of] redisseisin. For if you brought the assize and the tenant said that you were never so seised that you could be disseised, and you were then to put forward one 'part' of the [indenture of] fine, he would not be suffered to aver by the assize that you were never seised, for the fine would prove your statement by the words 'and Nicholas granted and rendered,' and a writ was sued [for the execution of the

[1] Some books say, 'Toudeby, Friskeney and Malberthorpe for Thomas the son.'

aleggastes mye en pledaunt la fine, et[1] l'assise deit[2] qe vous ne fustes unqes seisi issint qe vous porretz estre diseisi, vous le[3] attenderetz de faux serrement[4] par vertue de la fyne sauntz atteinte[5] purceo[6] qe la fyn prove le contrarie. Mès il ne serrent[7] reintz n'enprisonetz,[8] purceo q'il ne pount avoir conisaunce de ceo q'est contenu dedenz la fine.

3. ANON.[9]

Drein present: ou piert si jeo conuse le recoverer le testatour par assise, tut die jeo qe jeo ay ateynte pendaunt d'ateindre etc. les executours recover[ount].

Item *Brab.* dit q'un H. Bigot[10] avoit la garde du corps Philip de Kyme et de ses terres,[11] issint qu'une eglise se voida, par qei un abbé mist debat, et Sire H. porta le *quare impedit* vers l'abbé et recoverist le presentement. Dount l'abbé porta l'atteinte. H.[12] devia[13] einz ceo qe etc. Par qei ses executours entrerent et avoint la garde, issint qe la eglise aultrefoitz se voida; a qei l'abbé mist debat etc. Par qei les executours porterent le derrein present. Et l'abbé dit q'il avoit une atteinte pendaunt de atteindre etc., jugement si a recoverir dount il est d'atteindre[14] la premir enqueste de lour faux serment pussent[15] tittle prendre. Et fut[16] agardé qu'il recoverassent[17] le presentement sauntz enquere par assise, ne mye countreesteaunt qe l'atteinte fust pendaunt entre l'abbé et Hugh Bigot.

4. FROWYK *v.* LEUEKENORE.[18]

Ravisement de garde meintenu par gardein en sokage: ou piert qe le enfaunt est de age qaunt a sokage qaunt il est de xiiij. Respice.

[1] *Om.* et *Q.* [2] dit *Q*; deist *D.* [3] les *D.* [4] proces *D.* [5] latteynte *Q.* [6] de ceo *Q*; et *D.* [7] serront *D.* [8] riens enprisonetz *Q*; reynz ne enprisonetz *D.* [9] From *A*: compared with *D*, *Q*. This is given as part of the preceding case in *D*, *Q*. [10] *Om.* Bigot *D.* [11] serfs *D.* [12] *Om.* porta . . . H. *Q.* [13] dona *A*; devia *D*, *Q*. [14] est atteyndre *Q.* [15] puisse il *D.* [16] en fussent *A.*; ou fist *Q.*; ou fut *D.* [17] recoverast *D*, *Q*. [18] Text from *A*: compared with *D*, *M*, *P*, *Q*, *S*, *Y* (f. 259) and a short version in *X*. Headnotes from *A* and *Q*. *In S a marginal note says* 'In banco regis.'

fine]. And even if [in your assize] you did not allege the fine, and the assize said that you were never seised so that you could be disseised, you would attaint the assize of a false oath by virtue of the fine, for the fine would prove the contrary of their verdict—or rather, it would not exactly be an attaint,[1] for the jurors would not be imprisoned and held to ransom, for they could not have cognisance of what was contained in the fine.[2]

3. ANON.[3]

A brings *quare impedit* against *B*, recovers and presents. The church falls vacant. *Semble*, that *A* can recover against *B* by darein presentment, though *B* is prosecuting an attaint against the previous inquest.

Brabazon, C.J., said that one H. Bigot had the wardship of the body of Philip of Kyme and of his lands, and a church fell vacant, and an abbot raised debate, and Sir H. brought the *quare impedit* against the abbot, and recovered the presentation. Then the abbot brought an attaint, and H. died before [the attaint was taken], and his executors entered and had the wardship, and then the church again fell vacant, and the abbot raised debate. So the executors brought the assize of last presentation, and the abbot said that an attaint was pending etc., and prayed judgment whether the executors could take their title in the recovery when he had an attaint pending against the first inquest for their false oath. And it was adjudged that [the executors] should recover the presentation without any inquiry by the assize, notwithstanding the attaint pending between the abbot and Hugh Bigot.

4. FROWYK *v.* LEUEKENORE.[4]

A writ of ravishment of ward for a guardian in socage is maintained against the objection that it is new. It has been devised by the common counsel of the clerks in the Chancery and falls within the Statute (Westm. II. c. 24) which enjoins the making of writs *in consimili casu*.

[1] See the French original of this speech. Translation is difficult.

[2] See the next case.

[3] Apparently this is a dictum of the Chief Justice occasioned by his talk of attaint in the previous case.

[4] This case is Fitz., *Garde*, 6, and has passed thence into Sec. Inst. 439. Proper names from the record.

Ravisement de garde des tenemenz en sokage, ou le bref fut chalengé par diverses enchesons : et stetit breve non obstantibus omnibus.

Agneys[1] qe fut la femme William de Flowik[2] porta bref de ravissement de garde vers Thomas de L.[3] et aultres només en le bref, et dit qe come la garde a luy appent de la terre et de l'heir Renald de F.[4] taunt qe l'age[5] l'avauntdit heir, come a plus prochayn amy a qi le heritage ne pout descendre, et qe[6] l'avaundit R. ses teres tient en sokage, scil. par fealté et par les services de ij. s. par an etc.,[7] de quele garde l'avauntdit Agneys fust seisi taunt qe a tiel jour, qe T. et les aultres etc. ' et predictum heredem in custodia sua existentem vi et armis rapuerunt[8] in com. Essexie abduxerunt contra voluntatem ipsorum Agnetis et Henrici[9] et ipsum ibidem maritaverunt etc.[10] ad grave dampnum etc.' [11]

Herle. Vous veez bien coment ele ad porté soun bref de ravissement de garde etc. des tenemenz tenuz en sokage, dount il n'avoit[12] bref a la comune ley, einz est[13] bref a[14] la ley especial des tenemenz tenuz par fee de chivaler et[15] a les seignures[16] a les queux la garde appent. Par qei nous demaundoms jugement si a cesti bref de ravissement etc., dount statut ne overe point,[17] deive estre respondu.

Toud. Nous avoms moustré coment la garde a nous appent et coment nous fumes seisi etc., dount un tort a nous est fait, de quel tort bref nous est doné accordaunt a nostre cas. Jugement, si[18] a cesti bref de ceo tort ne devoms estre respondu.[19]

Herle. A la comune ley il n'avoit[20] nul bref si noun bref de dreit de garde, mès pur[21] hastyve[22] remedie et pur punyser[23] le trespasour[24] si fust le bref de ravissement ordiné a ceaux a queux le profit appendoit. Et desicome ceo[25] profit serroit al heir qaunt il vendreit a soun age, jugement, si ele, a qi nul profit poet avenir, cest bref vers nous pusse user.

Malm. ad idem. Statut veot[26] qe des heirs ravis[27] etc. le seignur a qi la forfeture appent eit bref de ravissement. Mès si ore mesque ele[28] recovereit, ele r[ecovereit] a l'oeps[29] l'enfaunt etc. et *per consequens* hors de cas de statut. Jugement etc.

[1] Alice *M, P.* [2] Will. Froweys *M*; Frowys *P*; Flotewyk *S*; Frowyk *Y.* [3] Leuqenore *M*; *sim. P.*; Leukenore *S, Y.* [4] Froweys *M*; Frowyk *Y.* [5] leal age *M, P.* [6] eo quod *M, P.* [7] *Om.* scil . . . etc. *M, P. Ins.* scil. de R. tantum et de W. tantum *S.* [8] *Ins.* et *D, M, P, S, Y.* [9] *Om.* contra . . . Henrici *A, D, Y*; *ins. M* and *sim. P, but* heredis. [10] *Om.* et . . . etc. *M, P.* [11] ipsius Agnetis et contra pacem nostram *M*; *sim. P.* [12] il ny ad nul *M.* [13] *Ins.* un *M, P.* [14] fondu sur *M, P*; bref livere a *Y.* [15] *Om.* et *M, P, Y.* [16] al seignour *P.* [17] *Ins.* en ceo cas *D, Y.* [18] *Om.* si *A.* [19] Jugement etc. *M, P.* [20] ny avoit *M, P.* [21] *Om.* pur *A.* [22] hastier *Y.* [23] punir *M, P, Y*; punisser *D.* [24] les trespasours *D, M, P.* [25] le *M, P.* [26] dit *M.* [27] ravisez *M, P.* [28] ore la femme *M.* [29] *Om.* loeps *A, D, Y*; *ins.* eops *P.*

Various objections to its wording are overruled. The heir in socage is of full age at fourteen.

Agnes, sometime wife of William of Frowyk, brought a writ of ravishment of ward against Thomas Lewkenore and others named in the writ. And she said that whereas the wardship of the land and heir of Reginald of Frowyk belonged to her until the age of the said heir, as to the next friend of his to whom the inheritance could not descend, and whereas the said Reginald held his land in socage, to wit, by fealty and by the service of two shillings a year, and whereas she was seised of that wardship until a certain day, there came the said Thomas and the others ' and by force and arms ravished the said heir, being in her custody, and led him away into the county of Essex, against the will of the said Agnes and of the said heir, and there married him etc., to the grave damage of the said Agnes etc.'

Herle. You see how she has brought her writ of ravishment of ward in respect of tenements held in socage. And there is no such writ as this at the common law, and the special [statutory] law [1] only gives a writ where the tenements are holden by knight's service, and gives it to the lords to whom the wardship belongs. Therefore we demand judgment whether you ought to be answered to this writ of ravishment where the Statute does not operate.

Toudeby. We have shown how the wardship belongs to us, and how we were seised etc., so that a tort is done to us; and for this tort a writ is given to us according to our case. Judgment, whether we ought not to be answered to this writ for this tort.

Herle. There was no writ at the common law except the writ of right of ward, and for speedy remedy and the punishment of trespassers the writ of ravishment was ordained for those to whom the profit [of a wardship] belonged. And since in this case the profit would come to the heir when he came to full age, we demand judgment whether she, to whom no profit can come, can use this writ against us.

Malberthorpe to the same effect. The Statute says that for heirs ravished the lord to whom the forfeiture belongs shall have the writ of ravishment. But in this case, even if she recovered, she would recover to the use of the infant, and so the case is outside the Statute. Judgment etc.

[1] Stat. Merton, c. 6; Stat. Westm. II. c. 35.

Friss. Si nous fussoms[1] a demaunder la garde de la terre et del heir nous serroms[2] a recoverir damages pur detenue etc. Auxint par decea. Depus qe nous sumes[3] seisi et vous hors de nostre seisine le ravistes et ceo bref[4] nous est doné, jugement si nous ne devoms estre r[esponduz].

Toud. ad idem. Le tort est fait a nous qe ne deit mye estre despuny, qe statut voet 'quod non recedant conquerentes[5] de[6] cancellaria sine remedio.'[7] Et depus qe ceo bref nous est lyveré de la chauncellerie,[8] et l'enfaunt[9] en ceo cas n'ad mye actioun, et *per consequens* si nous ne fussoms r[espondu] le tort remeindreit despuny, jugement etc.

West. Si vous devetz estre eidé il covent qe ceo soit par la lay especial, et la ley especial ne overe si noun pur celuy a qi la garde et le mariage appent.[10] Mès le mariage ne appent mye a vous *racione predicta*, et *per consequens* hors de[11] statut.

Herle ad idem.[12] Si enfaunt soit dedenz age et en la garde soun prochayn amy par resoun des tenemenz tenuz en sokage, qaunt il vendra a soun age de xiiij. aunz, a quel temps il poet consenter[13] de estre marié, la terre luy doit estre lyveré. Dount jeo pose qu'il se marie tauncqe come il soit dedenz age ou atende[14] taunt q'il soit[15] de plein age de soun fait demeine encountre la volunté soun gardeyn, il n'avera point de soun mariage la value. Par qei il piert qe actioun ne poet ele[16] avoir par statut.[17]

Pass. Si un enfaunt dedenz age[18] se marie encountre la volunté soun seignour en qi garde il est, soun seignour avera les terres taunt q'il eit receu la value de soun mariage.[19] Mès ore en ceo cas, mesqe l'enfaunt se ust marié dedenz age encountre sa volunté, ele[20] n'avera mye etc. Par qei etc. {Mès[21] ceo point ne put pas encoure vers vous, pur ceo qe qauntqe vous avez tut est al oeps l'enfaunt. Jugement etc.}

Friss. Posito[22] q'un homme ne tient forsqe un demi acre de terre en sokage,[23] il devie soun heir dedenz age, par qei il est en la garde un soun prochayn amy; il vendra[24] le mariage; qaunt le heir

[1] fussoms hors et *S.* [2] seriom *Y.* [3] nous serroms r[eceu] et rec[overioms] damages per locum (?) a multo fortiori ou nous fumes *M*; *sim. but om.* per locum *P.* [4] ravistes de quel tort bref *Y.* [5] conquerens (?) *A*; querentes *M*, *P*, *Y.* [6] a *M*, *P.* [7] etc. *M*, *P.* [8] livere par le chaunc[ellour] *M.* [9] et enfaunt *M.* [10] pur cely cuius custodia et maritagium ad ipsum pertinet *D*, *Y.* [11] *Ins.* cas de *D*, *M*, *P.* [12] *Om.* ad idem *M*, *P*, *S.* [13] assentir *M*, *P*, *S*, *Y.* [14] *Om.* atende *Y.* [15] ou qaunt il est *M*, *P.* [16] il *D.* [17] par qai statut nest pas taille a ly *S.* [18] *Ins.* et en la garde son seignour *M*, *P*; *sim. D.* [19] avera etc. solonc ceo qe statut veot *M*, *P.* [20] il *D.* [21] Alternative from *M*, *P.* [22] Jeo pose *M*, *P.* [23] *Ins.* en demene *M*, *P.* [24] amye, le quel amy jeo pose q'il vende *M*, *P.*

Friskeney. If we were demanding the wardship of the land and of the heir we should recover damage for the detinue. So here. And, since we are seised,[1] and out of our seisin you ravished the heir, and this writ has been given to us, judgment whether we ought not to be answered.

Toudeby to the same effect. The wrong is done to us, and it ought not to go unpunished, for Statute says 'let not the complainants leave the Chancery without remedy.'[2] And, since this writ is delivered to us in the Chancery, and the infant has no action in this case, and consequently, if we were not answered, the wrong would remain unpunished, we pray judgment etc.

Westcote. If you are to be aided by law, it must be by the special [statute] law; and the special law operates only for one to whom belong the wardship and the marriage. But, for reasons that have already appeared, the marriage does not belong to you: consequently you are outside the Statute.

Herle on the same side. If an infant within age be in the wardship of his next friend by reason of tenements held in socage, then when he comes to the age of fourteen—and that is the age at which he can consent to a marriage—his land ought to be delivered to him. Now I put case that by his own act and without the guardian's consent he marries while within age or waits until he is of full age and then marries, [the guardian] will not have the value of the marriage. So it is clear that she can have no action upon the Statute.[3]

Passeley. If an infant under age marries himself against the will of the lord in whose guardianship he is, his lord will hold the land until such time as he has received the value of the marriage.[4] But in this case, although the infant were to marry himself against the guardian's will, the guardian would not [be entitled to] retain the land. {But[5] that cannot happen to you, for whatever you have is for the use of the infant.}

Friskeney. Suppose that a man holds but a half-acre in socage and dies leaving an heir within age who is ward to the next friend, then the guardian can sell the marriage; and, when the heir attains

[1] Or 'recover damages for the detinue, and *a multo fortiori* when we are seised.'

[2] Stat. Westm. II. c. 24: 'non recedant querentes a curia Regis sine remedio.'

[3] Or 'that the Statute is not made for her.'

[4] Some add 'according to the Statute.'

[5] An alternative for the last sentence.

vendra a soun age il acounterent [1] ensemble [2] issint qe s'il eyt mys [3] la value de sa terre en [4] soun mariage, tot serra alowé. Par qei il semble qe [5] asset a li appent etc. Jugement etc.[6]

Brab.[7] Purceo qe statut veot 'quod querens non recedat sine remedio de cancellaria' et ceo bref est doné par comune consayl de la chauncellerie [8] acordaunt a soun cas solome le fait, et noun pas foundu sur Statut *de custodia etc.* [9]; par qei [10] nous agardomps le bref bon.[11]

Herle. Vous veez bien coment il [12] porte soun bref et dit qe com la garde de la terre et del heir [13] etc. 'qui tenementa illa tenuit in sokagio' a luy appent, par resoun des queux tenemenz le heir est de age qaunt il est de age de xiiij. aunz, et pus dit 'ad [14] legitimam etatem etc.' [15] ele suppose d'avoir la garde taunq'il soit de age de xxj. aunz,[16] qe n'est mye pursuaunt. Jugement si a cesti bref q'est contrarie deive estre receu.

Toud. Coment qe l'age [17] ne soyt mye tot un de chyvalerie et de sokage, auxi bien il i ad leal age en sokage, scil. de xiiij. aunz, com de chyvalerie.[18] Par qei le bref est asset bon.[19]

Herle. Unqore jugement du bref, qe la ou ele [20] dit qe come la garde a luy appent etc. de quele garde ele fust seisi taunt qe Thomas et les aultres luy raviser[ent] [21] etc. de quele ravissement le trespas est fait a luy,[22] par qei ele doit [23] damage recoverir, et pus dit [24] encountre la volunté l'avauntdit heir [25] la miere [26] a qui le tort es fait et pus lie damages a luy mesme [27] en supposaunt damages d'aultr trespas, jugement si a cesti bref contra[riaunt] etc.[28]

Toud. Nous avoms dit qe la garde a luy [29] appent etc., et dount nous sumes [30] seisi taunqe vous ravistes etc., et issint avoms nous affermé par bref [31] a nous etc.[32] dc qei bioms [33] damages recoverir. Et mesq'il i eust [34] plus en le bref enheaunt [35] le tort et le trespas, ceo ne fait mye le bref malveys.

[1] aconterunt *Y.* [2] il acomptera ove son gardeyn *M, P.* [3] *Ins.* coustages a *Q.* [4] terre et de *D, Q, S.* [5] *Ins.* le profit *Y.* [6] gardeyn et il serra auxi ben charge del mariage cum del profit de la terre allocatis allocandis etc. Videtur quod ratio ista concludit pro alia parte *P.* [7] Ber *P.* [8] *Om.* de la chauncellerie *M, P.* [9] *Om.* de . . . etc. *M, P*; de pueris etc. raptis etc. *S.* [10] *Om.* par qei *M, P.* [11] agardoms qe vous respondez outre *M, P.* [12] ele *Y.* [13] *Ins.* Regnaud *D.* [14] usque ad *M, P, S.* [15] par quel 'legitimam etatem' *M*; *sim. P*; par quel parole *S, Y.* [16] an *A.* [17] qe la garde *P.* [18] cum xxj. an en fee de chivaler *P*; cum en chivalrie xxj. an *S.* [19] pursuaunt *M, P.* [20] le bref *M, P.* [21] ravirent *M.* [22] *Ins.* mesme *M, P.* [23] dit' *A.* *Ins.* soule *M, P.* [24] le bref veot *M, P*; et puis dit en contant *S.* [25] Henri *S.* [26] menerunt *S.* [27] *Ins.* ad dampnum ipsius Agnetis *D.* [28] et pus le bref veot 'contra voluntatem dictorum Agnetis et heredis' en affermaunt le tort estre fet al heir, jugement si de autri tort a tiel bref q'est contrariaunt en lui mesme deit estre r[espondu] *M, P.* [29] nous *D, M, P, Y.* [30] fumes *D, M, P.* [31] *Ins.* tort fet *interlin. Q.* [32] afferme le tort en vous *M, P*; *sim. Y.* [33] devoms *M, P, Y.* [34] il eit *M*; il y eyt *P.* [35] agreaunt *S.*

full age, they shall account together, so that if [the guardian] has put the value of the land into a marriage,[1] that expenditure will be allowed.[2] So it seems that [the marriage] does belong to the guardian sufficiently. Judgment etc.

Brabazon, C.J. Forasmuch as Statute says 'that a plaintiff leave not the Chancery without remedy,' and this writ has been given by the common counsel of the Chancery[3] according to the plaintiff's case, and is not a writ founded upon the Statute concerning wardship, we adjudge this writ good.

Herle. You have seen how she brings her writ and says that whereas the wardship of the land and the heir of so-and-so, 'who held these tenements in socage,' belongs to her. Now in regard to such tenements an heir is of full age when he is of the age of fourteen years. And then her writ goes on to say 'until the lawful age etc.,' and in so doing supposes that the wardship ought to last until the heir is of the age of twenty-one years. This is an inconsequence. Judgment, whether she ought to be answered to a writ that is self-contradictory.

Toudeby. Although the age for socage and for chivalry is not all one, yet there is a 'lawful age' for socage just as much as for chivalry—namely, fourteen years. Thus the writ is good enough.

Herle. Once more, judgment of the writ. It says that the wardship belongs to her etc., and that thereof was she seised until Thomas and the others ravished [the ward]. This wrong [so she supposes] is done to herself, and so she ought to recover damages for it. But then her writ goes on to say 'against the will of the aforesaid Agnes and of the heir.'[4] And then she lays the damage in herself alone, and thus ascribes to herself damage for a trespass done to another. Judgment, whether she ought to be answered to this self-contradictory writ.

Toudeby. We have said that the wardship belongs to her etc., and that thereof we were seised until you ravished etc. And so we have assigned to ourself that wrong for which we are hoping to recover damages. And though there be more in the writ heightening the tort and the trespass, that will not make the writ bad.

[1] Or better 'has put expense into the value of the land and the marriage.'

[2] Another version says 'the guardian shall be charged (all proper allowances being made) with the marriage as well as the profit of the land.' It then adds in Latin, 'But this argument seems to make for the other party.'

[3] Stat. Westm. II. c. 24: 'concordent clerici de cancellaria in brevi faciendo.'

[4] This seems the better reading. Some add (and this brings out the point) 'and so she affirms a wrong done to the heir.'

Fris.[1] Cele parole qe l'eir deust estre marié encontre sa volunté tut est incident del ravisement precedent, et issi assez pursuyaunt.

{*Fris.*[2] *ad idem.* S'il eit assez en le bref par qai nous devoms damages recoverire, pur le pluis qe ne soit my contrarie n'est pas le bref mayns suffisaunt. Mais le pluis de ceo qe Henri duit estre marié[3] encontre sa volunté est assez pursuant. Par qai ceo pluis ne fet le bref mauveys etc.

Herle. En cas il[4] fait et en cas ne mye. Come en cas ou il est[5] pursuant soloumc resoun il ne fait mie le bref malveys. Set secus est la ou il contra[rient][6] ut in isto casu. Par qei etc. Item le bref veot encountre la volunté mesme cest Agneys et Henri[7] ipsum maritaverunt, par qei ele suppose le trespas estre fait a eaux deux, et pus dit le bref a les damages Agneys. Par qei ele bie soul a recoverir damages d'aultri trespas.[8] Par qei etc.[9] Item s'il fust marié encountre le gree sa[10] femme et a gré l'enfaunt, al heir[11] ne appent mye actioun eynz a la femme,[12] et[13] l'heir n'ad mye actioun[14] par cesti bref, que le bref dit a damages Agneys. Par qei nous demaundoms jugement si de aultri actioun poet ele damages recoverir.[15] Item d'estre marié encountre le gree le heir, ceo ne poet estre, q'il ne poet assenter[16] au mariage tauntq'il soit de l'age de xiiij. aunz, et s'il soit marié avaunt c'est defesable qaunt il vient a soun age.[17] Et issint qauntqe homme parle de assent dedeinz age avauntdite tut est encontre ley.

Brab.[18] Si actioun est sur qei[19] soun bref est conceu depent del ravisement, le bref est doné par Statut 'ne querentes' et est ordiné[20] par comune consail des clerks[21] de la chauncelerie.[22] Dount, coment qe le bref veot 'contra voluntatem ipsius A. et H.,' ceo n'est forsqe agregger[23] le trespas. Par qei le bref asset bon.[24]

West. La ou ele dit qe nous venimes a force etc. le jeodi prochain après la feste etc.[25] et ravismes[26] le fitz R.[27] dedenz age et dedens sa

[1] *Om.* this speech *A, D, Q*; *ins. M, P.* [2] This version from *S*; *sim. Y.* [3] *Om.* marie *S*; *ins. Y.* [4] le plus *M*; le pluys *P.* [5] *Om.* est *A.* [6] est contrariant *D, M, P.* [7] dictorum Agnetis et her[edis] *M*; *sim. P.* [8] *Om.* daultri trespas *P.* [9] *Ins.* Et dautrepart [en] action personel q'est en comune len ne put soule damages recoverer, mes le bref etc. ut supra *M*; *sim. P, Q, S.* Item daction personel qe est mixt a deux persones en comun ne put lun soul persone soul damages recoverer *Y.* [10] la *D, Q, S, Y.* [11] a la femme, *Q, S, Y.* [12] al heir *Q, Y.* [13] mes *Y.* [14] *Om.* eynz . . . actioun *S.* [15] *Om.* Item . . . recoverir *P.* [16] *Ins.* desasenter *P.* [17] End of speech, *A, D, S, Y.* Continuation from *M, P.* [18] Brab. lour chacea outre (*instead of this speech*) *M, P.* [19] Sa action de qai *S, F*; *sim. Q*; a sa action de quai *D.* [20] endosse *Q, Y*; adosse *S.* [21] *Om.* des clerks *S.* [22] des clers et del chauncelere *D*; de communi consilio clericorum de cancellaria *Y.* [23] a grossere *S*; a gregeer *Q*; abregg' *Y.* [24] *Ins.* Berr. nota qe dit qel devereit le corps etc. *S.* [25] la feste Seint Thom. lan etc. *S*; lan primere *Q.* [26] ravistes *A.* [27] Renaud de *F, D*; Renald de Frouwych' *Y.*

Friskeney. That phrase about the heir being married against his will is incidental to the preceding [charge of] ravishment, and so is sufficiently accordant with the rest of the writ.

{*Friskeney*[1] on the same side. If she has enough in the writ to entitle her to damage, the writ will not be the less sufficient because of surplusage that is not inconsistent. But the surplusage—namely, that the heir was married against his will—is sufficiently consistent, and therefore does not make the writ bad.}

Herle. Sometimes [an additional clause] will, and sometimes it will not, make the writ bad. It will not if it is in pursuance of the rest, but it will if it is contrariant, as it is in this case. Therefore etc. Moreover, the writ says 'against the will of Agnes and [the heir] they married him,' and so she supposes that the wrong was done to them both, and yet the writ proceeds to say 'to the damage of Agnes.' So she is endeavouring to recover damages for a trespass done to another. Wherefore etc.[2] Again, if the infant was married against this woman's will, but with his own will, he could have no action, but she [upon your theory] would[3]; and the heir has no action by this writ, for the writ says 'to the damage of Agnes.' Therefore we demand judgment whether you can have damages out of an action that belongs to another. And, again, it is nonsense to talk of the heir being married against his will, for he could not assent to a marriage until he was fourteen, and, if he were married before that, the marriage would be defeasible. So that all that anyone says about assent or dissent before that age is contrary to law.

Brabazon, C.J. Her action for which her writ is conceived depends [not on the marriage, but] on the ravishment. And the writ is given by the Statute, which says 'let not the complainants [leave the Chancery without remedy']. And it has been fashioned[4] by the common counsel of the clerks of the Chancery. So, although it has the words 'against the will of Agnes and of the heir,' it is good enough; for those words are mere aggravation of the trespass. (So he drove them further.[5])

Westcote. Whereas she says that we came with force etc. on [Saturday] next before the feast of St. Thomas in the first year of the reign, and ravished the son of R., who was within age and in her

[1] An alternative for the last speech.

[2] Some add 'and in a personal action that belongs to two in common one cannot recover damages, but the writ is bad.'

[3] Some books change the places of the 'he' and 'she' in this sentence. Apparently the text became obscure.

[4] Some books say 'endorsed.'

[5] Some books omit this speech, merely remarking that Brabazon drove them further.

garde esteaunt, nous vous dioms qe des tenemenz tenuz en sokage le heir est de pleyn age qaunt il est de xiiij. aunz. Dount nous vous dioms qe *die et anno* surditz il fust de l'age de xiiij. aunz.[1] Jugement si ele deit estre r[espoundu].

Toud. Nous voloms averrir nostre bref qe vous luy ravistes hors de nostre possessioun [2] et dedenz age. Prest etc.

Herle. Vous nous avez doné certein temps qaunt il dust estre ravi, et a ceo dioms nous qe de xiiij. aunz, prest etc., et *per consequens* de pleyn age.

Toud. De xv. aunz est il de plein age d'avoir ses terres, et de assenter a mariage qaunt il est de xiiij. aunz. {Set [3] hoc fuit negatum expresse.} {Et[4] male dixit et ideo non allocatur.}

Pass. La femme [5] en chyvalrie pur avoir sa terre avera mesme l'age qe heir en sokage, scil. xiiij. aunz.[6]

Toud. Q'il ne fust pas de xiiij. aunz. Prest etc.[7]

Pass. le traversa et tendit l'averrement et pria pays de Londres ou l'enfaunt nasquit.[8]

Et concessum fuit quod haberet ut supra.

{*Herle.*[9] A tel jor et tel an com il unt counté il fu passé xiiij. anz : prest etc.—*Toud.* Il covent prendre issu sur le trespas et nent sur le jor.—Pus *Toud.* tendi d'averrer q'il fu denz xiiij. aunz al tens q'il aveint counté etc.—Et alii econtra.}

Note from the Record.

Coram Rege Roll, Hilary, 3 Edw. II. (No. 199), r. 34d, Hertf.

Thomas de Leukenore, William de Pouns, Richard his son, and John de Felstede, parson of the church of Hadleghe, were attached to answer Agnes, wife that was of Reginald de Frowyk, in a plea [demanding] why (whereas the wardship of the land and heir of Reginald, until the lawful age of the said heir, belongs to Agnes, since Reginald held his land in socage and Agnes is next [of kin] to the heir, and Agnes had long been in peaceful seisin of the wardship) the defendants by force and arms ravished Henry the son and heir of Reginald, lately found in the wardship of Agnes at Pelham Furneus in the county of Hertford, and abducted him thence to Pleshey Castle (*castrum de Plessetis*) in the county of Essex, and 'against the will of Agnes and Henry' married him, and other enormities to the said Agnes

[1] si fut leir de plein age solonc la nature de tenance tenu en sokage, prest etc. *M*, *P*. [2] garde *M*, *P*. [3] *From P*; et hoc fuit negatum *Q*; set hoc non fuit negatum *D*; hoc fuit negatum *Y*. [4] From *S*. [5] femel *S*; femele *Y*. [6] Pass. L'age q'est limite a femel tenant en chevalerie pur avoir sa terre, mesme le age est etc. en sokage et hec est etas xiiij. annorum *M*, *P*. [7] End of case, *A*, *Q*, *S*. Et alii econtra *D*. *Continuation from M*, *P*. [8] End of case, *Y*. [9] This ending of the case from *X*.

wardship, we tell you that as to tenements held in socage the heir is of full age at fourteen, and we tell you that on the day and year aforesaid this heir was of the age of fourteen years.[1] Judgment, whether she should be answered.

Toudeby. We will aver our writ—namely, that you ravished him from our possession while he was under age. Ready etc.

Herle. You have supposed him to be ravished on a certain day, and to that we say that he then was fourteen years old (ready etc.), and therefore of full age.

Toudeby. He is of full age to have his land at fifteen; at fourteen he is of age to assent to a marriage. (This was expressly denied.)

Passeley. No, the same age is fixed for the tenant in socage that is fixed for the female tenant in chivalry to have her land—namely, the age of fourteen years.

Toudeby. He was not of the age of fourteen years. Ready etc.

Passeley traversed and tendered the averment and prayed a jury of London, where the infant was born.

And this was granted. [Issue] as above.

{*Herle.*[2] On the day and in the year of which they counted he had passed the age of fourteen: ready etc.—*Toudeby.* You must take issue on the trespass, not upon the day.—Afterwards *Toudeby* tendered to aver that he was under fourteen at the time of which they counted.—Issue joined.}

Note from the Record (*continued*).

did, to her damage of two hundred pounds, and against the peace etc. The count states that Reginald held in socage, to wit of Thomas de Leukenore a messuage, two carucates of land, a hundred acres of wood, and twenty of meadow in Suthemymmes[3] by the service of five shillings and three pence a year for all service, and of the Earl of Gloucester and Hertford a carucate of land in the same vill by the service of a pair of gilt spurs or six pence for all service, and of the Earl of Hereford a windmill in the same vill by the service of one penny a year for all service. The count further tells how on [6 July, 1308] Saturday the vigil of the Translation of St. Thomas the Martyr in 1 Edw. II. the defendants ravished the said Henry and detained him until [2 Oct. 1308] Wednesday next after Michaelmas in 2 Edw. II., and married him 'against the will of the said Agnes and Henry.' Damages are laid at two hundred pounds.

The defendants, except Thomas, plead the general issue. Thomas says that Reginald held of Thomas's father, Roger de Leukenore, a tenement in

[1] Or 'was of full age according to the nature of tenements held in socage.'

[2] From a condensed version of the case.

[3] South Mimms, in Middlesex.

Note from the Record (*continued*).

Middlesex called New Park (*novus parcus*), which contains twenty acres of wood, and another tenement called Gunnyldesmede, which contains two acres and a half of meadow, and another tenement called Gunnildesfelde, which contains fifteen acres of land in Suthmymmes in the said county, by homage and knight's service, doing (*faciendo*) towards scutage sixteen pence when it runs at forty shillings and so in proportion, and also held certain other tenements called Scaldereslonde and Coliereslonde, which contain fifteen acres of land in the same vill, by homage and knight's service, doing towards scutage nine pence when it runs at forty shillings, and also held another tenement called the tenement of Robert atte Folde, which contains twelve acres of land in the same vill, by homage and knight's service, doing towards scutage four pence when it runs at forty shillings, and also held of the said Roger other tenements called Shepecotesfelde and Sayeresfelde in the same vill, which contain eighty acres of land, by homage and knight's service, and by doing towards scutage two shillings and four pence when it runs at forty shillings and so in proportion; and that of these services Roger was seised by Reginald's hands; and that Reginald died in his [Roger's] homage; and that after the death of Reginald and on the day and year aforesaid he [Thomas], as well he might, seised into his hand the said heir, being within age, whose wardship and marriage by reason of the said services [belonged to him], without doing any trespass to Agnes against the King's peace, as she complains; and of this he puts himself upon the country.

And Agnes says that Reginald held nothing of Roger by homage and knight's service in the said county as is aforesaid; but says that whatever Reginald had in the said county he held in socage and by services certain (*per certa servicia*); and she says that Thomas of his own proper tort (*de iniuria sua propria*) on the day and year aforesaid ravished the said heir, being within age and in her wardship, by force and arms and against the peace and married him against her[1] will ('a custodia sua rapuit et ipsum heredem contra voluntatem suam maritavit') as aforesaid; and she prays that this be inquired by the country.

Issue is joined, and a *venire facias* for jurors from the neighbourhood of Suthmymmes in the county of Middlesex is awarded for the octave of Easter. And as to William, Richard, and John [the other defendants], the sheriff of Hertford is to cause to come at the same term twenty-four as well knights as others of the neighbourhood of Pelham Furneus.

Afterwards, on the octave of Michaelmas in 4 Edw. II., the jurors from Middlesex say that Reginald held no tenements by knight's service of Roger, as Thomas asserts; for they say that whatever Reginald held, whether of Roger or of other lords, in the said county he held in socage and by services certain. And because the Court desires to be certified, before proceeding to judgment, whether Henry is married or not, a day is given to

[1] Or 'his' or 'their.'

Note from the Record (*continued*).

Agnes and Thomas on the octave of the Purification to hear judgment. And the sheriff of Essex, in whose bailiwick is the castle of Pleshey, in which Henry (so it is said) was married, is commanded to cause twenty-four as well knights as others to come from the said bailiwick. And as regards William, Richard, and John the jury is respited for default of jurors.

At that day there is an adjournment to five weeks from Easter. At that day the jurors from Hertfordshire and Essex come. And the jurors of Hertfordshire say that Richard and John, by the command, ordainment, and mission (*per preceptum, ordinacionem, et missionem*) of William de Pouns, by force and arms and against the peace ravished Henry, as Agnes complains, to her damage of two hundred marks. The jurors of Essex say that Henry was married at the castle of Pleshey against the will of Agnes and Henry, and that Henry was not thirteen years old when he was married. And because the Court desires to be certified of the value of the lands and tenements of the said heir and also of his marriage, before proceeding to judgment, therefore the sheriff of Middlesex, in whose bailiwick are the lands and tenements of the said heir, is ordered to distrain the jurors who were formerly here in the said inquest of Middlesex, and to have their bodies on the octave of Trinity.

At that day comes Agnes, but Thomas and the others do not come. Therefore be the jury taken by default. The jurors say that the lands and tenements of the said heir are of the net value of (*valent quiete*) eighty pounds a year in all issues.

It is awarded that Agnes recover against Thomas and all the others her said damages of two hundred pounds (*sic*),[1] so that she answer therefor to the heir when he shall come to his full age; and that Thomas and the others be taken. Execution is awarded, but a subsequent statement tells that the damages are paid to Agnes, and that the imprisonment of the defendants is pardoned by the King.

The same roll (r. 90, Hertf.) shows that the heir brought another action based on the same facts. Thomas de Leukenore and five other named persons are attached to answer Henry de Frowyk why they took and imprisoned him. Thomas pleads a justification on the ground that Henry's father, Reginald, held of Thomas by knight's service. Henry replies *de iniuria*. On the octave of Michaelmas in 4 Edw. II. a verdict is found against Thomas and two other of the defendants: damages, a hundred marks. There are three successive adjournments for judgment, to the octave of the Purification, five weeks from Easter, and the octave of Trinity.

It will be noticed that the recorded pleadings are by no means such as the report would have led us to expect. The report tells of a plea that the boy was of full age, and of issue on that plea. The record shows a justification and a reply *de iniuria*.

[1] The full amount that she claimed, and more than the Hertfordshire jury gave her.

5. ANON.[1]

Entré, ou piert qe home serra mye receu de abatre le bref si le demaundaunt veyle prendre a la defaute, einz q'il eit def[ait] la sumouns.

Un A. porta bref d'entré vers J. de Nortwik,[2] le quel fist defaute. A jour qe doné lui fust vient par le graunt *cape*[3] et demaunda jugement du bref, qar il dit qe le bref fust porté vers Johan de Nortwik soun piere et il est mort, et dit qe soun noun est Johan de N. le juen.[4] Jugement etc.

Launf.[5] dit q'il est mesme celuy vers qi le bref est porté et tenaunt fust jour du bref purchacé. Prest etc.

Hervi. Savetz la defaute si vous vouletz, qar vous n'averetz mye l'avauntage pur bref abatre come vous eussez eu si vous eussez venu en court par procès de lay.

Par qei il gaga[6] la ley.[7]

6. LE RAAS *v.* MILDECUMBE.[8]

Besayel, ou piert qe femme qe put voucher fust osté de eyde.
Besael, ou il pria eide, et non habuit, pur ceo q'il purra voucher.

Un bref de besael fust porté vers une femme.

Denom. Thomas de Aldbury[9] dona ceaux tenemenz a G.[10] nostre baroun et a nous et a les[11] heirs de nos ij. corps engendretz, et si etc. qe mesmes les tenemenz demorassent a les dreits heirs G.; et G. est mort et nous n'avoms rien en ceaux tenemenz si noun a terme de vie, et le fee et le dreit est a Johan le fitz G., sauntz qi nous ne poums respoundre, et prioms eide de luy.

Hedon. Vous ne devetz eide avoir qar vous poetz voucher.

Denom. Si jeo ay ij. voies, list a moy de me prendre a quel jeo voderoi, et si jeo pusse voucher, par taunt ne su jeo ousté de moun eide prier.

Roes. Si ele doit voucher ceo serroit par my le fait, mès par my

[1] Text from *A*: compared with *D*, *Q*. [2] Norwik' *D*; Norwyc' *Q*. [3] fut par le grant cape il vynt *D*. [4] jouene *D*: joevene *Q*. [5] *Ins.* pur A. *D*. [6] agarda *D*. [7] proces de ley, par qei gagetz la ley *Q*. [8] Text from *A*: compared with *D*, *Q*. Headnotes from *A* and *Q*. [9] Abbemby *Q*; Aburbury *D*. [10] Geffrei *D*. [11] nos *Q*.

5. ANON.[1]

A tenant who does not appear at the first day must, if the demandant insists, save the default before he can abate the writ for misnomer.

One A. brought a writ against John of Northwick. He made default. At the day given to him by the great *cape* he came and demanded judgment of the writ, and said that the writ was brought against John of Northwick his father, who is dead, and that his own name is John of Northwick the younger, so he demanded judgment.

Laufer. He is the man against whom the writ was brought and was tenant on the day of writ purchased. Ready etc.

Stanton, J. Save the default if you please; for you shall not have that advantage of abating the writ which you would have had if you had come into court by process of law.

So he waged law [to prove nonsummons].[2]

6. LE RAAS *v.* MILDECUMBE.[3]

In an action of besael the aid-prayer of a tenant in special tail after possibility of issue extinct is refused, apparently on the ground that she might vouch.

A writ of besael was brought against a woman.

Denom. Thomas of Aldbury gave these tenements to G. our husband and to us and to the heirs of our two bodies begotten, [with remainder] to the right heirs of G. And G. is dead, and we have nothing in these tenements save for term of life, and the fee and the right remain in John son of G., without whom we cannot answer; and we pray aid of him.

Hedon. You ought not to have aid, for you can vouch.

Denom. If two ways are open to me, I may betake myself to which I please; and, if I can vouch, I am not thereby precluded from my aid-prayer.

Ruston. If she is to vouch, that must be by means of the deed,

[1] Record not found.

[2] Or make 'so wage your law' part of Stanton's speech.

[3] Proper names from the record The identification, though probable, is not certain.

le fait ne poet ele [1] voucher, et par consequent l'eyde prier n'est mye resceyvable.

Hervi. R[esponez] si vous voletz, qe [2] n'averetz mye l'eyde.

Herle. Vostre besael ne morust mye seisi en soun demene com de fee. Prest etc.

Et alii econtra.

Note from the Record.

De Banco Roll, Hilary, 3 Edw. II. (No. 180), r. 15, Oxon.

Thomas le Raas demands against Galiana de Mildecumbe a messuage and a carucate of land in Mildecumbe,[3] whereof Alice la Raas, great-grandmother of the demandant, whose heir he is, was seised in her demesne as of fee on the day on which he died. The count lays seisin in demesne as of fee in the time of Henry III. in Alice, alleges a taking of esplees, and traces the descent of the fee from her to one Alice as daughter and heir, from her to one Jordan as son and heir, and from him to the demandant as son and heir. (*Note continued on opposite page.*)

7A. MISTERTON *v.* YORK (ARCHBISHOP OF).[4]

Quare impedit, ou piert q'il serra receu a defaire moun tittle sauncz moustrer dreit en sa persone, a dire qe nul tiel fust receu ne institut de evesqe a soun presentement.

Waulter de M. porta soun *quare impedit* vers W. Ercevesqe de Everwike, et dit q'a luy appent a presenter, et par la resoun qe un soun ancestre, A. par noun, fust seisi del manier de K., a qi l'avowesoun de l'eglise est appendaunt, qe a mesme la eglise presenta un soun clerk, T. par noun, qi etc. De A. descendi le dreit du manier ensemblement ove l'avowesoun linealment a cely q'ore demaunde,[5] et issint, etc.

Herle. La ou vous dites qe vostre auncestre A. par noun presenta T., nous vous dioms qu'il ne presenta point ne qei il fust [6] receu ne institut de evesqe. Prest etc.

Malm. Nous avoms affermé par bref et par counte en vostre persone un tort, et [7] la r[esponez] vous qe nostre auncestre ne presenta point etc., par la ou nous avoms affermé le dreit du manier, a qi l'avowesoun de l'eglise etc., en nostre persone, et nous seisi du manier a qi etc., et vous ne moustretz point coment le presentement

[1] ne put il poynt *Q.* [2] qar vous *D*, *Q.* [3] Mod. Milcombe. [4] Text from *A*: compared with *D*, *Q.* [5] *Ins.* come a fuitz et heir *D.* [6] ne qil ne fut *D*, *Q.* [7] par *D*, *Q.*

but by means of the deed she cannot[1] vouch, and consequently her aid-prayer is not to be received.

Stanton, J. Answer if you please, for you shall not have aid.

Herle. Your great-grandfather did not die seised in his demesne as of fee. Ready etc.

Issue joined.

Note from the Record (*continued*).

Galiana, by Simon de Berchestone her attorney, after formal defence, denies that Alice the great-grandmother died seised of the said tenements after the time of limitation, to wit, after the coronation of King Henry.

Issue is joined, and a *venire facias* is awarded for the octave of Trinity. This seems to be the reported case, although the questions raised in the report leave no mark upon the roll.

7A. MISTERTON *v.* YORK (ARCHBISHOP OF).[2]

In a *quare impedit* against the ordinary the demandant laid seisin of a manor and advowson in an ancestor, alleged descent to himself, and alleged a presentation by the ancestor. 'He did not present' is a good plea.

[William of Misterton] brought his *quare impedit* against W. Archbishop of York and said that it belonged to him to present, because one A. his ancestor was seised of the manor of K., to which the advowson of the church is appendant, and he presented to that church his clerk, one T. by name, who [was admitted] etc. From A. the right of the manor with the advowson lineally descended to the demandant; and therefore etc.

Herle. Whereas you say that your ancestor A. presented T., we tell you that he did not present nor was T. received and instituted by the bishop. Ready etc.

Malberthorpe. We have by writ and count affirmed a tort in your person, and your answer is that our ancestor did not present; whereas we have affirmed in our person the right of the manor, to which the advowson belongs, and that we are seised of the manor, to which etc., and you do not show how the presentment belongs to you, but tacitly

[1] Our MSS. will not suffer us to omit this 'not.' But see Hedon's speech and the two headnotes. [2] This case is Fitz., *Quare impedit*, 44.

a vous appent, mès en teysaunt grauntetz vous qe vous estes destorbeour. Jugement, si vous devetz a tiel averement estre r[eceu], saunt ceo qe vous dietz coment a vous appent etc.

Toud. Nous avoms defait vostre tittle, donques a moustrer nostre tittle [1] a celui qe nul dreit n'en ad ley ne me chacera mye.

Malm. Il n'est pas en un *quare impedit* sicom en derreyn presentement la ou le bref veot 'quis advocatus etc. presentavit ultimam personam.' La serret vous bien r[eceu] al averement etc.; mès desicome nous affermoms par le *quare impedit* un tort en vostre persone, le quel tort covent qe soyt espurgé [2] par ascun tittle de dreit [3] coment [4] appent a vous a presenter, et vous ne moustretz nul etc., mès en teisaunt grauntez d'estre destorbeour, jugement etc., et prioms bref al evesqe etc.

Berr. Si trové soit qe vostre auncestre ne presenta point auxint com vous dites, qei prenderetz vous (*quasi diceret nichil*) ?

Malm. Si trové soit qe nostre auncestre presenta, quei en prendra il ?

Berr. Voletz l'averement ou noun ?

Friss. Sire, oyl.

Et ideo ad patriam.

7B. MISTERTON *v.* YORK (ARCHBISHOP OF).[5]

William de Mustertone [6] porta le *quare impedit* vers William Ercevesqe de Everwyk, et dit qe a tort ly destorbe et pas ne ly soffre presenter covenable persone al eglise de Multertone, qe voyde est et a son presentement append, par la reson qe un William son ael fut seisi du manier de Multertone, a qy l'avoeson est apendaunt, qe presenta son clerk, et qe a son presentement etc. en temps etc. dount de W. descendit le dreit du manoir, a qy etc., a Thomas com a fitz et heir, de Thomas a William,[7] et issint append etc., et le Evesqe etc.

Herle defendit et dit: La ou William porte [8] cesti bref et prent son title de son ael William, qe fut seisi de manoir etc. qe presenta

[1] estat *D*, *Q*. [2] purge *Q*. [3] ascun tiel dreit *Q*. [4] *Ins.* qe *D*. [5] Text of this second version from *R*: compared with *S*, *T*. [6] Misterton *S*, *T*. [7] *Ins.* qore demande *S*, *T*. [8] porta *R*; porte *S*.

concede that you are a disturber. Judgment, whether to such an averment you ought to be received, unless you say how [the presentation] belongs to you.

Toudeby. We have defeated your title. Therefore the law will not drive us to show our title to one who has no right.

Malberthorpe. In a *quare impedit* it is not as it is in the *darein presentment* where the writ inquires 'what patron presented the last parson.' In that case [i.e. in *darein presentment*] you might well be admitted to this averment; but by this *quare impedit* we affirm a tort in your person, and it behoves that this tort be purged away by some title of right showing that the presentment belongs to you. But you show none and tacitly admit that you are a disturber. We demand judgment etc. and a writ to the bishop.

Bereford, C.J. If it were found that your ancestor did not present as you have alleged, what would you take by your action? ('Nothing' was the answer expected.)

Malberthorpe. If it were found that our ancestor did [not][1] present what would he [the impedient] take?

Bereford, C.J. Will you receive the averment or not?

Friskeney. Very well, Sir.

And so to the country.

7B. MISTERTON *v.* YORK (ARCHBISHOP OF).[2]

William of [Misterton] brought the *quare impedit* against William, Archbishop of York, and said that wrongfully he disturbs him and will not suffer him to present a proper parson to the church of [Misterton], which is vacant and belongs to his presentation, for that one William his grandfather was seised of the manor of [Misterton], to which the advowson is appendant, and presented his clerk, who at his presentment [was admitted] etc., in time etc., and that from William the right of the manor to which [the advowson etc.] descended to Thomas as son and heir, and from Thomas to William the plaintiff; and so it belongs etc.; but the [Arch]bishop etc.[3]

Herle defended and said: Whereas William brings this writ and takes his title from his grandfather William, who was seised of the

[1] The MSS. do not sanction this 'not'; but we take the argument to be that, even if the suggested issue were found for the impedient, he, having shown no title, could not pray a writ to the bishop.

[2] A second report of the preceding case.

[3] The pedigree is not quite correctly stated. See our Note from the Record.

un son clerk Richard, Sire, la dioms nous qe William[1] ne presenta unqes R.[2] ne R. unqes a son presentement receu etc.

Denum. Il est ordinarie du leu. Cleime il rienz en l'avoeson ou noun ?

Herle. Ceo n'avoms mester a faire, qe nous avoms traversé vostre title, issint qe actioun par cesti bref ne poet avoir. Par qei a vous ne devoms dreit.[3]

Denum. Nous n'entendoms mye q'il puisse de sy leger[4] eschaper, de pus q'il est ordinarie du leu, sanz ceo q'il die q'il cleime rienz en l'avoeson.

Herle. Vous ditez verité, en cas covent qe nous mostroms coment nous clamoms, com si nous ussoms conu vostre title. Mès nous avoms traversé[5] vostre title, par qey il ne covent pas.[6]

Malm. Il est somouns a respondre pur qey il nous[7] desturbe[8] presenter etc. a qy il ne respont nient. Jugement.

Toud. A qy r[esporrioms] ? A vous qe nul dreit n'avet ?

Scrop.[9] Nous avoms dit qe a tort nous destorbe etc., a qe il dit qe William nostre ael ne presenta etc., qe n'est pas suffisaunt respouns, com il nous semble. Par qey depus qe il ne put dedire qe nostre auncestre[10] fut seisi du manoir, a qy etc., et il ne mostre nul title coment il cleyme etc. Et prioms bref al evesqe.

Berr. Posoms q'il deit qe un son predecessor presenta dreyn etc. et trové fut qe noun et qe vostre title n'est pas[11] veritable, qe prendrez[12] vous (*quasi diceret nichil*) ? Dount il vous dit qe la ou vous pernez vostre title de W. vostre ael, la vous dient il q'il ne presenta poynt.

Scrop. Il presenta sicom nous avoms dit. Prist etc.[13]

Note from the Record.

De Banco Roll, Hilary, 3 Edw. II. (No. 180), r. 46, Not.

William Archbishop of York was summoned to answer William Doynel[14] de Misterton in a plea that he permit him to present a fit parson to the church of Misterton, which is vacant and [belongs to] his gift. The plaintiff by his attorney says that one Walter Doynel was long ago seised of the manor of Misterton, to which the advowson of the said church belongs,

[1] Sire il dit son talent kar il *S*, *T*. [2] *Om.* R. *S*, *T*. [3] a vous navoms mestier nostre dreit moustrer *S*; *sim. T*. [4] qil put necligens *S*, *T*. [5] Herle. En cas ou nous conyssoms vostre title vous dites verite, mes avoms ore traverse *S*, *T*. [6] *Ins.* moustrer coment nous clamoms *S*, *T*. [7] vous *R*. [8] *Ins.* a *S*, *T*. [9] *Ins.* Sire, vous avez bien entendue coment nous avoms porte nostre quare impedit vers Will. etc. et *S*, *T*. [10] *Ins.* ne *S*, *T*. [11] ne fut *S*, *T*. [12] averez *S*, *T*. [13] *Ins.* et alii econtra *S*, *T*. [14] Or 'Doyvel.'

manor etc. and presented one [Roger] his clerk, we, Sir, tell you that William never presented [Roger], nor was [Roger] ever admitted etc. on his presentation.

Denom. [The impedient] is ordinary of the place. Does he or does he not claim anything in the advowson?

Herle. With that we have nothing to do, for we have traversed your title so that you cannot have an action by this writ, and so we are not bound [to show] you our right.

Denom. He is ordinary of the place, and we do not think that he can escape so easily, unless he says that he claims nothing in the advowson.

Herle. What you say would be true enough if we had admitted your title.[1] In that case we must say whether we claim anything in the advowson. But we have not to do that here, for we have traversed your title.

Malberthorpe. He is summoned to answer why he disturbs us in presenting etc., and to this he has not answered. Judgment.

Toudeby. Whom should we answer? You who have no right?

Scrope.[2] We have said that wrongfully you disturb us etc., and to that your only reply is that William our grandfather did not present. To us it seems that this is not a sufficient answer. So, since he does not deny that our ancestor was seised of this manor to which [the advowson etc.], and since he shows no title in support of any claim of his own, we pray judgment and a writ to the bishop.

Bereford, C.J. Put case that he said that a predecessor of his was the last to present and that it was found that this was not so [but] that your title was not true, what in that case would you take? ('Nothing' was the expected answer.) He says that, whereas you take your title from your grandfather, he [your grandfather] never presented.

Scrope. He did present as we have said. Ready etc.

Note from the Record (*continued*).

and thereto presented one Roger de Soureby, his clerk, who at his presentation was admitted and instituted in time of peace, in the time of King Henry, grandfather of the now King; and that by his death the church now is vacant; and that from Walter the manor with the advowson descended

[1] See the version in our notes.

[2] Some books here say 'We have brought our *quare impedit* against William.' By 'William,' so it seems, is meant the archbishop, William Greenfield.

Note from the Record (*continued*).

to one William as son and heir, and from William to one Thomas as son and heir, and from Thomas to the plaintiff as son and heir; and that the Archbishop impedes him: damages, two hundred pounds.

The Archbishop, by his attorney, comes and, after formal defence, says that Roger de Soureby was not admitted or instituted to the said church upon the presentation of Walter, as the plaintiff says; and of this he puts himself upon the country. (*Note continued on the opposite page.*)

8. BOYS *v.* CHARLES.[1]

Entré, ou le tenaunt alegge jointfeffement, et fut chacé a moustrer coment et receu d'averer le sauncz especialté.

Entré, ou le bref fuit porté vers un homme, qe dyt q'il n'avoit rien mès joint ove sa femme et ne mist avant nul especialté, et unqore le bref s'abati etc.

Quatre[2] parceners[3] porterent bref d'entré[4] vers Edward Charles, et demaunderent[5] le manier de L. ove les apurtenaunces, en quel celuy Edward n'ad entré sy noun pus le leés q'un A.[6] lour auncestre fist[7] a W. de T. a terme qe passé est.

Toud.[8] Edward vous dit qu'il n'ad rien en ceo manier, si noun joynt ove Alice sa femme, nyent nomé en le bref. Jugement.

Will. Si voletz cesti bref abatre par jointfeffement, il vous covent de ceo moustrer especialté, et vous ne moustrez nul. Jugement.

Toud. Nous voloms averrir la jointenaunce, qar meynte homme est feffé sauntz chartre, et si poet homme averrir le feffement auxi bien ou il est fait a ij. en comune come a un simplement.

Berr. Ceo soleyt estre auncien ley de feffer un homme sauntz chartre par corn ou par esporn[9] ou par vergee,[10] et ceo soleyt estre sauntz chartre; mès novel ley est si homme voet bref abatre par jointfeffement[11] de moustrer especialté.

Toud.[12] Si Edward et sa femme furent a demaunder mesmes les tenemenz[13] furent donet[14] a eaux et a lour heirs de lour ij. corps issaunts, et ceo voleint averer, il serroint r[eceuz]; a mult plus fort il

[1] *Vulg.* p. 60. One version from *A*: compared with *D*, *Q*. The other from *M*: compared with *B*, *L*, *P*, *S*, *T*, *Y* (f. 89 d). A short version in *X*. Headnotes from *A* and *B*. [2] Deux *M*, *B*, *L*, *P*, *S*, *T*. [3] Johan de Boys et A. sun parcener *Y*. [4] dente *A*. [5] demaunda *A*. [6] Henri Gredgode *M*; Henri Troche *L*; Henri Tregoze *S*. [7] fust *A*. [8] Pass. *M*, *B*, *L*, *S*, *T*. [9] espeie *Q*; esporone *D*. [10] verge *D*, *Q*. [11] *Ins.* ceo serreit *D*, *Q*. [12] *Ins.* Ber. *D*. [13] *Ins.* et voillent dire qe mesmes les tenemenz *D*, *Q*. [14] donetz *D*; *om.* donet *Q*.

Note from the Record (*continued*).

Issue is joined, and a *venire facias* is awarded for a fortnight from Easter. Afterwards on the octave of St. John Baptist the parties come by their attorneys, and the jurors chosen by consent of the parties say upon their oath that Roger de Soureby was not admitted or instituted to the said church upon the presentation of the said Walter Doynel. Therefore it is awarded that the Archbishop go thence without day, and that the plaintiff take nothing by his writ, but be in mercy for his false claim.

8. BOYS *v.* CHARLES.[1]

The tenant in an action (*A*) pleads joint tenancy with his wife (*B*) in abatement of the writ. He is driven to disclose his case. Without producing specialty, he pleads a feoffment to one *X* with remainder in special tail to *A* and *B*, which he desires to aver. Held a good averment, and the writ abates. Discussion of the cases in which feoffments without charter can be proved by the country.

Four [2] parceners brought a writ of entry against Edward Charles and demanded the manor of L. with the appurtenances 'into which this Edward had no entry, save after (*post*) the lease which A., an ancestor of theirs, made to [R. Burnel] for a term which has expired.'

Toudeby.[3] Edward tells you that he has nothing in this manor, save jointly with one Alice his wife, who is not named in the writ. Judgment.

Willoughby. If you wish to abate this writ by a joint feoffment you ought to show a specialty, and you show none. Judgment.

Toudeby. We will aver the joint tenancy, for many a man is enfeoffed without charter, and a feoffment to two may be averred just as well as a feoffment merely to one.

Bereford, C.J. Under old law it is the practice to enfeoff a man without charter by horn or spur [4] or rod: and that without charter; and it is new law if in order to abate a writ by joint feoffment you must show charter.[5]

Toudeby. If Edward and his wife were demandants alleging that these same tenements were given to them and to the heirs of their two bodies issuing and desired to aver this, they would be received;

[1] Proper names from the record.
[2] Or 'two.'
[3] Or 'Passeley.'
[4] Or 'sword.'
[5] We take the phrase 'it is new law' to be ironical. But the text can be differently read, and the C. J. may change his view as the case proceeds.

serrount r[eceuz] a l'averement par la ou il sount eynz, pur ceo qe lour condicioun en taunt est meillour. Jugement etc.

West. Si R. de Malm[erthorpe] et moi soient [1] jointfeffés et le bref soit porté vers moy soul, jeo ne serreie mye r[eceu] pur bref abatre sauntz especialté. Nent plus par decea.

Herle. Vous serretz receu d'averer la jointenaunce, et par taunt abatereit [2] le bref.

Berr. Coment qe ceo soit, vous pledez moult covertement, et pur ceo descloez nous le cas.

{*Wilib.*[3] Qei avez de ceo?

Kyng.[4] Prest d'averrer etc.

West. Vous ne poietz rien avoir joynt ove vostre femme si noun par voie de purchaz, ou covendreit qe vous eussez especialté. Et vous ne moustrez nul, et demaundoms jugement etc.

Toud.[5] Feffement puist bien estre saunz chartre. Et n'entendoms mye qe nous avoms mester a moustrer autre chose forqe tauntsoulement averrer la joyntenance.

Berr. Si vous voussez [6] sur tiel poynt demurrer en jugement, nous ne saveroms mye sur qei jugement se rendra,[7] qar joynt tenaunce put estre en meynte manere. Par qei il vous covent desclarer [8] coment et en quele manere vous tenez joyntement.}

Toud. R.[9] Burnel dona ceaux tenemenz a J. Charles a term de sa vie, et après soun decès mesmes les tenemenz remeyndreient [10] a E. et A.[11] sa femme et a les heirs de lour ij. corps engendretz, et s'il deviassent etc.[12] qe la revercioun fust [13] a Robert Burnel et a ses heirs. Issint tenoms nous joyntement.

Berr.[14] Si jeo doune tenemenz a un homme et a sa femme et a lour heirs,[15] le homme survist la femme,[16] serra le heir r[eceu] en le mortdauncestre d'averer les pointz de soun bref qe soun auncestre fust [17] seisi etc.[18]? Si serra, tot soyt soun piere feffé sauntz chartre. Et del houre qe l'issue serroit receu en le mortdauncestre a l'averement de l'estat soun piere, il semble a moult plus fort qu'il mesme serra receu d'averer soun estat et le feffement fait en comune.

Herle ad idem. Si tenemenz soient donetz a un homme et a sa

[1] seoms *D.* [2] abateretz *Q*; abatrez *D.* [3] In *M* (*B*, *L*, *P*, *S*, *T*, *Y*) the following takes the place of the preceding discussion. [4] Hunt *S*, *T.* [5] *Om.* this speech *M.* [6] vousisez *Y.* [7] qei rendre jugement *B*, *L*, *P*, *Y*; qei nous ne rendroms nostre jugement *S.* [8] esclarifier *B.* [9] Robert *D.* [10] mesme le manier demorreit *M.* [11] a Edward et Alice *M.* [12] sanz heir entre eux *M.* [13] qe le manier retournereit *M*; revertereit *Y.* [14] *Om.* this and two next speeches *M* (*B*, *L*, *P*, *S*, *T*, *Y*). [15] *Ins.* de lour corps issauntz *Q.* [16] *Ins.* ne *Q.* [17] morust *D*, *Q.* [18] en son demene com de fee *D*, *Q.*

and *a multo fortiori* they should be received to the averment when they are 'in' and their condition is therefore better. Judgment etc.

Westcote. If Robert of Malberthorpe and I be jointly enfeoffed, and a writ be brought against me alone, I shall not be received to abate the writ without specialty. And no more [shall the averment be received] in this case.

Herle. Yes, you would be received to that averment, and thereby you would abate the writ.

Bereford, C.J. Be that as it may, you are pleading very covertly. Tell us what the real facts are.

{*Willoughby.*[1] What have you for that?

Kingeshemede.[2] Ready to aver etc.

Westcote. You cannot have anything jointly with your wife, unless it be by way of purchase; and in that case it behoves you to have some specialty. And you show none, and we demand judgment.

Toudeby. There may well be feoffment without charter, and we do not see that we have need to produce anything beyond averring the joint tenancy.

Bereford, C.J. If you were to demur in judgment at this point, we should not know upon what we were giving judgment, for a joint tenancy there may be in various ways. So you ought to declare how and in what manner you hold jointly.}

Toudeby. R. Burnel gave these tenements to J. Charles for the term of her life, and after her death they were to remain to Edward and Alice his wife and the heirs of their two bodies begotten, and if they should die etc. the reversion should be to R. Burnel and his heirs. It is thus that we hold jointly.

Bereford, C.J. If I give tenements to a man and his wife and to their heirs,[3] and the man survives the wife, shall [not] the heir be received in a mortdancestor to aver the points of his writ, to wit, that his ancestor was seised [in his demesne as of fee]? Certainly he shall, although his father were enfeoffed without charter. And since the issue would be received in a mortdancestor to aver the father's estate, *a multo fortiori* (so it seems) should [the father] himself be received to aver his estate and the feoffment made [to him and his wife] in common.

Herle to the same effect. If tenements be given to a man and

[1] In some books the following takes the place of the preceding debate.

[2] Or 'Huntingdon.'

[3] Some insert 'of their bodies issuing.'

femme saunz chartre, et le baroun aliene, ele serra receu en le *cui in rita* d'averer la jointenaunce sauntz especialté. Auxi par de cea etc.

Friss. Si le bref soyt porté vers le homme la ou la femme est joyntfeffé, et ele nyent nomé ove soun baroun, ele avera soun recoverir après la mort soun baroun par assise de novele diseisine, et issint serreit defait le jugement qe adeprimes se fist en la court le Roy, qe serroit duresce etc.

West. Si soun baroun voleit perdre les tenemenz de gree, et ele eust venu en court avaunt jugement,[1] et deit qe les tenemenz furent donetz a luy et a soun baroun et ceo voleit averer, ele ne serra mye receu sauntz especialté. Nyent plus par de cea. {Et[2] desicom A. en qi bouche cest excepcioun plus proprement girreit q'en vostre ne serra receu, demaundoms jugement si vous sanz especialté pussez nostre bref abatre.}

Friss. Ele serra[3] de meillour condicioun la ou ele est en seisine qe la ou ele est par voie d'actioun. Estre ceo, chartre n'est mye feffement einz est testmoignaunce de feffement, le quel feffement poet estre auxi bien prové par pays com par especialté. Jugement etc.

Westcot. Si bref soit porté vers un joyntfeffé, le bref ne se abatera mye sauntz especialté, et si poet le feffement estre asset bon[4] conu en pays par mye la lyveré de seisine. Par molt plus haut[5] ne serreit celuy en le remeindere r[eceu] pur bref abatre par jointfeffement, purceo qe le remeyndre n'est pas par lyveré de seisine, einz fait par my reconissaunce[6] en court ou par especialté, de qei pays ne poit avoir conissaunce sauntz especialté. Jugement, depus qe l'estat q'il cleime est par remeindre qe chiet en especialté, dount il ne moustre rien, s'il deive etc.[7] Item si celui en le remeindre fust a demaunder, depus q'il est estraunge purchaceour, il lui covendreit moustrer especialté ou[8] il ne serreit r[espoundu], qar il ne porra mye averer le remeindre. Nyent plus par decea etc.

Toud. Nous sumes seisi par mye le remeyndre et tendomps d'averer nostre seisine en la forme qe nous avoms dit, la quel avauntage nous n'averoms mye si nous fussoms a demaunder. Jugement etc.

Westc. Si la femme en qi bouche[9] gist naturelement ceo r[espouns] pur bref abatre dona[10] cele excepcioun, ele ne serra pas r[eceu] sauntz especialté. Dount plus tardif serrietz vous r[eceu] pur

[1] *Ins.* rendu *D.* [2] In *M* a somewhat different version of this speech ends as follows. [3] Sera ele *Q*; ele serreit *D.* [4] *Om.* bon *D.* [5] fort *D.* [6] rendre *D, Q.* [7] *Om.* depus . . . etc. *D, Q.* [8] *Ins.* autrement *D.* [9] persone *Q.* [10] donast *D, Q.*

his wife without charter, and the husband alien, she shall be received in the *cui in vita* to aver a joint tenancy without specialty. So here.

Friskeney. If the writ be brought against the man where the wife is joint feoffee and she is not named with her husband, she shall have her recovery after his death by the novel disseisin, and thus a judgment once given in the King's Court would be undone[1]; and that would be a hardship.

Westcote. If her husband wished to lose the tenements without compulsion, and she came into court before judgment and said that the tenements were given to him and her and that this she was ready to aver, she would not be received without specialty. And no more [should he be received to this averment]. And since the wife would not be received, though this plea would lie more properly in her mouth than in yours, we pray judgment whether without specialty you can abate our writ.[2]

Friskeney. Yes, but the person who is in seisin is in a better position than one who is bringing an action. Moreover, a charter is not a feoffment; it is only evidence of a feoffment, and the feoffment may be as well proved by the country as by specialty. Judgment etc.

Westcote. If a writ be brought against a joint feoffee, the writ will not be abated without specialty, and yet the feoffment may be well enough known in the country by the livery of seisin. And *a multo fortiori* one of two joint remaindermen[3] should not be allowed to abate a writ, for the remainder is not given to him by any livery of seisin but is given by a conusance[4] in court or a specialty, of which the country cannot have knowledge. Judgment, whether he ought [to be received to this averment], since the estate that he claims is by remainder, which is a matter of specialty, and he produces none. Besides, if a remainderman was demandant in an action, then, being stranger and purchaser, he would have to produce a specialty or he would not be answered, for he could not aver the remainder. And no more [can he aver a remainder] here.

Toudeby. We are seised by means of the remainder, and we tender to aver our seisin in manner aforesaid; and that advantage [of having a seisin to aver] we should not have if we were demandants. Judgment.

Westcote. If the wife, in whose mouth this answer in abatement of the writ naturally lies, would not be received without specialty,

[1] The supposition being that the action against the husband is successful.

[2] The last sentence is not represented in all the books.

[3] Or rather 'one of two joint tenants who originally were remaindermen.'

[4] Or 'a render.'

bref abatre par cel excepcioun [1] en qi bouche ne appent mie ceo [2] naturelement de cele excepcioun alegger. Jugement etc.

Toud. S'il meist avaunt chartre, le bref se abatereit meintenaunt. Mès ore nous [3] mettoms avaunt ceo qe taunt vaut, scil. averement du pays, par quel averement,[4] si trové fust [5] la jointenaunce, le bref se abatereit. Jugement etc.

Berr. Il dit q'il et sa femme sount jointfeffés a els et a lour heirs de lour ij. corps engendretz, et si etc., et si [6] ad sa femme jointe [7] estat ove luy et ceo voet averer. Voletz l'averement ou noun?

West. Sire, nous ne poums dedire la joint tenaunce.

Berr. Si agarde la court qe vous ne preignetz rien par cesti bref etc. mès seietz en la mercy, et l'autre a Dieu sauntz jour etc.[8]

{*West.*[9] De melior condicioun ne devez estre pur nostre bref abatre sanz especialté qe vous ne serrez [10] si vous fussez hors par voie de action. Mès si vous fussez hors par voie d'action, vous ne serrez [11] r[espondu] sanz especialté en ceo cas. Nent plus sanz especialté moustrer a nostre bref abatre ne devez estre receu.

Berr. Par foy! Si serra,[12] qar la ou il est einz si put pays meutz avoir conisaunce de son entré et de sa tenance qe la ou il fut hors a demaunder com un estraunge en le remanere [13] de chose q'il ne fut unqes seisi ne ses auncestres. Et d'autrepart, ne purreit il mye en ceo cas joyndre bataille ou mise de graunt assise tut sanz chartre? Si purreit. Par qei ne put il estre receu de averrer la joint tenance etc.?

West. S'il fut le primer q'entra par [14] le graunt Robert Burnelle ceo serroit une voye,[15] mès ore est il einz par [16] la mort Johan Charles come estraunge purchasour. Par qei il semble qe ceo ne chiet mye en conisaunce de pays.

Berr. Il est einz. Vodrez [17] vous par taunt q'il n'ad chartre qe son estat et l'estat sa femme soit pery (*quasi diceret non*)? Qar put estre q'il avoit fet qe [18] est perdue: par taunt n'est pas son dreit perdue.

Fris. Chartre n'est pas prove de tenance, mès est un tesmoignance de tenance.[19] Et del hure qe nous voloms averer qe nous etc. ut supra: qar la ley n'est pas fondu sur chartre [20] einz est fondu sur la liverance [21] de seisine qe chiet en conisance de pays. Jugement etc.

[1] *Om.* ele ne . . . excepcioun *Q.* [2] si *D*, *Q.* [3] *Ins.* ne *A*; *om. D*, *Q.* [4] *Ins.* et *A*; *om. Q.* [5] seit *D.* [6] issint *D.* [7] *Om.* jointe *D.* [8] *Om.* mes . . . etc. *A*; *ins. Q and sim. D.* [9] In *M* the end of the case takes the following form; *sim. B*, *L*, *P*, *S*, *T*, *Y.* [10] serriez *Y.* [11] serriez *Y.* [12] *Ins.* il de meillour condicion *L.* [13] remeyndre *L.* [14] apres *Y.* [15] serroit ascun collour de reson *L.* [16] apres *B*, *L*, *Y.* [17] voudriez *Y.* [18] *Ins.* il *M*; mes il est *B*; et qil *Y.* [19] mesqe une tesmoignaunce *B.* [20] funde par *L.* [21] livere *Y.*

then yet more tardily shall you be received to abate this writ by this plea, which does not so naturally lie in your mouth. Judgment etc.

Toudeby. If we produced a charter, the writ would at once abate. But we produce what is equivalent, namely an offer to aver by the country; and by that averment, if the joint tenancy were found, the writ would abate. Judgment etc.

Bereford, C.J. He says that he and his wife are joint feoffees to them and the heirs of their two bodies begotten with [reversion etc.], and thus the wife has a joint estate with the husband; and this they desire to aver. Will you receive the averment or not?

Westcote. Sir, we cannot deny the joint tenancy.

Bereford, C.J. Therefore the Court awards that you take nothing by this writ, but be in mercy, and that the [tenant] go without day.

{*Westcote.*[1] When you are trying to abate our writ, you should be in no better position than if you were 'out' and were bringing an action. But in that case you would not be answered without specialty. And no more in this case shall you be received to abate our writ without specialty.

Bereford, C.J. My faith! Yes, he shall. For when he is 'in' the country may better have knowledge of his entry and of his tenancy than if he were 'out' and were demanding as a stranger by way of remainder that of which neither he nor his ancestors were seised. Besides, in that case might he not join battle or the grand assize and all without charter? Yes, he might. Why, then, should he not be received to aver the joint tenancy?

Westcote. If he were the first to enter by the grant of Robert Burnel that would be one thing.[2] But here he is 'in' as a strange purchaser after the death of [Joan] Charles. So it seems that this does not lie in the knowledge of the country.

Bereford, C.J. He is 'in.' Would you have his estate and the estate of his wife perish because he has no charter? No. It may be that he had a deed which is lost, but thereby he has not lost his right.

Friskeney. Charter is no proof of tenancy; it is only evidence of tenancy. And since we are willing to aver as above [we demand judgment]; for the law is founded, not on charter, but on livery of seisin, which lies in the cognisance of the country. Judgment etc.

[1] One group of MSS. gives the following version of the last part of the debate.

[2] Or 'there would be some colour of reason.'

Herle ad idem. Si Edward eust aliené, et Alice sa femme après son decès eust porté son *cui in vita* countaunt de sa seisine[1] com de fee et de dreit solonc la forme, ja ne covendra q'ele eust especialté etc.

Westec. Si cest excepcion[2] fut resceivable sanz especialté, ceo serreit a trier s'il y avoit tiel forme[3] ou nemye, qe n'est mye triable en ceo cas sanz especialté etc.

Herle. Noun serroit, mès serroit a trier s'il tignent joyntement ou noun.

Berr. Voillez l'averrement ?

Wilb. En voz agardz soit.

Hervi. Purceo q'il tendent d'averrer qe Alice etc. si[4] agarde etc.[5] rien par vostre bref etc.}

{*Bere.*[6] Si le bref ne se abate ore, il abatera autrefoiz. Pur ceo volez l'averement ?

Westcote. Sire, nanil.

Hervy. Si agarde ceste court etc. que vous seiez en la mercy et Edward a dieu etc.}

Note from the Record.

De Banco Roll, Hilary, 3 Edw. II. (No. 180), r. 36, Norf.

John de Boys and Alice de Brunham, John de Ludham and John Gernoun, by their attorney, demand against Edward Charles the manor of Billingforde as their right and inheritance, and into which Edward has no entry save after (*post*) the demise which Nicholas Tregoz, uncle of the demandants, whose heirs they are, made to Robert Burnel for a term that has expired, and which after that term ought to revert to the demandants. The count states that Nicholas was seised of the manor in his demesne as of fee and of right, in time of peace, in the time of King Edward father of the now King, taking esplees, etc. to the value etc.; and that from him, since he died without an heir of his body (*de se*), the right descended to Lucy, Alice, Joan and Hawise as sisters and heirs; and that from Lucy the right of her share descended to John de Boys, one of the demandants, as son and heir; and that from Alice the right of her share descended to one Jacob as son and heir, and from Jacob, since he died without an heir of his body, to one Hubert as brother and heir, and from Hubert, since he died without an heir of his body, to one Thomas as brother and heir, and from Thomas, since he died without an heir of his body, to Alice de Brunham,

[1] *Ins.* demene *L.* [2] averrement *B.* [3] *Ins.* taille *B.* [4] est jointfeffe nient nome *B.* [5] *Ins.* qe vous ne preignetz *B.* [6] From *Y* after Willoughby's last speech.

Herle to the same effect. If Edward had alienated, and Alice his wife after his decease had brought her *cui in vita* counting on her seisin as of fee and right according to the form [of the gift], why! even then she would not have had to show specialty.

Westcote. If this averment were receivable without specialty, there would be a trial as to whether the form of the gift was thus 'tailed'; and that is a point which in such a case cannot be tried without specialty.

Herle. Not so. The trial would be whether [Edward and Alice] held jointly or not.

Bereford, C.J. Will you have the averment?

Willoughby. We submit to your judgment.

Stanton, J. Because they tender to aver that Alice etc., the Court awards etc. that you take nothing by your writ etc.}

{Bereford, C.J.[1] If the writ be not abated now, it will be abated hereafter. So will you take the averment?

Westcote. No, Sir.

Stanton, J. This Court awards etc. that you be in mercy, and that Edward take farewell etc.}

Note from the Record (*continued*).

one of the demandants, as sister and heir; and that from Joan the right of her share descended to John de Ludham, one of the demandants, as son and heir; and that from Hawise the right of her share descended to John Gernoun, one of the demandants, as son and heir.

Edward says that he ought not to answer them to this writ; for he says that the manor was at one time in the seisin of the said Robert Burnel, who gave the same to one Joan Charles, to hold for the whole of her life, so that after her death the manor should remain to the said Edward Charles and to one Alice his wife, to hold to Edward and Alice and the heirs of their bodies issuing, and, if Edward and Alice should die without an heir of their bodies issuing, then the manor should revert to Robert and his heirs. So he [Edward, the tenant] says that he holds the manor jointly with the said Alice his wife, who is not named in the writ, and without whom [he cannot answer]; and he demands judgment of the writ.

And John and the other [demandants] cannot deny this.

Therefore it is awarded that Edward go thence without day, and that John and the other [demandants] take nothing by this writ, but be in mercy for their false claim.

[1] In one book the case ends thus.

9A. ELYS *v.* RYGGESBY.[1]

Replegiari, ou cely a qy la conisaunce soy fist a terme de vie avowa pur altre service qe le conisour fust seisi, par la seisine l'auncestre paramount ; et fust osté del eide pur ceo q'il avoit rien pledé en le dreit.

Replegiari, ou purchasour avowa pur services dount soun feffour ne fust mye seisi.

Replegiari, ou celui, qi fut purchasour de services qi unqes ne fut seisi ne son feffour forsqe de fealté, avowa.

Un William porta le *replegiari* vers J. de B., et counta qe a tort prist ses averes.

Denom avowa la prise pur la resoun qe J. West piere Hawyse femme l'avauntdit W., qi heir etc., tient d'un Robert Trossbot certainz tenemenz par fealté et par vij. s. et iiij. chapouns etc., des queux services mesme cesti R. fust seisi par my la mayn mesme cesti Johan West etc. Dount de R. descendi le dreit des services a Hillaire com a fitz et heir. De H. a Johan com a fitz etc. De J. a T. com a fitz etc., le quel graunta a nous mesmes les services[2] a terme de nostre vie. Par my quel graunt W. et H. come del dreit H. se atornerent de lour fealté et de lour vij. s., et pur les chapouns arere de iij. aunz etc. si avowe il etc. sur W. et H. com sur etc.[3]

Hedon. Nous n'avoms riens en ceaux tenemenz si noun du dreit nostre femme, sauntz qi nous ne poums ceaux tenemenz charger etc., et prioms eyde de luy.

Cant. Vous n'avetz rien pledé en le dreit ne a jugement par qei il ne bosoigne mye de[4] eide avoir.

Hedon. Vous mesme nous avetz graunté l'eyde en taunt come vous dites qe nous n'avoms reins en ceaux tenemenz si noun du dreit nostre femme, sauntz qi etc.[5] Jugement etc.

Berr. Vous dites rien par qei l'eide vous serret graunté saunt ceo qe vous[6] ne poetz estre partie sauntz luy.

Et fust osté del eide.

Hedon. Vous avowez sur nous par resoun de cel graunt qe T. vous fist a terme de vostre vie. Nous vous dioms qe T. ne fust unqes seisi fors de la fealté et de les vij. s. Prest etc. Jugement si pur

[1] Text of this first version from *A*: compared with *D*, *Q*. Headnotes from *A*, *B*, *T*. [2] les tenemenz *Q*. [3] com sur soun vereis tenaunt com en parcele de le charge [*corr.* del leu chargee] par tiels services *Q*; *sim. D*. [4] *Om.* de *D*. [5] qi nous ne poms estre partie a ceste avowement si leide ne seit etc. *Q*. [6] sanz ceo qe vous pledetz asqun point a quei vous *Q*; *sim. D*.

9A. ELYS *v.* RYGGESBY.[1]

A man brings replevin. The avowry is upon him and his wife for services due from a tenement held in right of his wife. This avowry does not entitle him to aid from his wife before he has pleaded. *Qu.* whether a grantee of a tenant's services can avow upon the seisin of an ancestor of the grantor. *Qu.* whether he can do so if he is only grantee for life. *Qu.* whether in favour of a grantee seisin of parcel is seisin of the whole.

One William Elys brought replevin against [R. de R.], and counted that wrongfully he took his beasts.

Denom avowed the taking for the reason that John West, father of Cecily, William's wife, whose heir [she is], held of one Robert Trussebut certain tenements by fealty and seven shillings and four capons, etc.; and that of these services Robert was seised by the hand of John West[2]; and that from Robert the right of the services descended to [Hillaria as daughter] and heir, and from her to John as son and heir, and from John to Thomas as son [and heir]; and that Thomas granted the services to [the avowant] for the whole of his life; and that upon this grant [the plaintiff and his wife] attorned in right of [the wife] for their fealty and for the seven shillings; and that because the capons were arrear for three years, [the avowant] avows upon [the plaintiff and his wife] as upon [his very tenants].

Hedon. We have nothing in these tenements except in right of our wife, without whom we cannot charge [or discharge] them; and we pray aid of her.

Cambridge. You have pleaded nothing in the right and nothing to judgment which would make it necessary for you to have aid.

Hedon. But you yourself admitted our right to aid, inasmuch as you say that we have nothing in these tenements except in our wife's right, and without her we cannot be party [to the avowry].

Bereford, C.J. You say nothing to show why aid should be granted except that you cannot be a party without your wife.

He was ousted from the aid.

Hedon. You avow upon us by reason of the grant made to you by Thomas for your life. We tell you that Thomas was never seised, except of the fealty and the seven shillings. Ready etc. Judgment,

[1] Proper names from the record.

[2] The other reports of this case show that the descent of the tenancy was traced to the plaintiff's wife.

aultre services des queux il ne fust point seisi par nul graunt fait a vous, qe n'avet estat forsqe a terme de vie, sur nous poetz avower.

Denom. Nous avoms lié la seisine des services par my la mayn R.[1] Trussebot et de N.[2] descenderent des[3] services linealement a T. nostre conisour, la quel seisine vous ne dedites point. Et desicome T., qi estat nous avoms, serreit a ceste avowrie r[eceu] par my la seisine R.[4] soun auncestre, et ovesqe ceo sa seisine demeyne de partie des services, et nous[5] r[eceu] a trier nostre estat et l'estat nostre feffour, jugement si a ceste avowrie etc.

Berr. Vous pledetz a la seisine R.[6] et il pledent a la seisine T.,[7] et issint pledetz vous *ad diversa.* Et purceo conisset si T. fust seisi des chapouns et vous graunta ou noun, qar il ne pledera mye a l'estat R., purceo qe Hillaire par mi qi il fount lour descent pout aver relessé et quitclamé les services de chapouns, et vous ne serrez mye r[eceu] de trier la seisine ne l'estat R. l'auncestre vostre feffour.

Denom. Si soun piere fust seisi de la fealté et de les aultres services etc. par my la mayn soun tenaunt, et soun heir fors de la fealté, et me graunt[ast][8] mesmes les services des queux soun pier fust seisi, ne fra[9] jeo mye bon avowrie (*quasi diceret sic*)[10] et[11] ne fust moun feffour seisi fors de la fealté ? Sic hic.

Scrop. Vous n'estes qe termer a terme de vie. Mès si vous eusset fee aultre serroit, qe donqes si vous fusset seisi de partie de les services par[12] my la conissaunce cely qi dreit en avoit a conustre, acrestereit a vous actioun a destreindre pur l'entier.[13]

Berr. Vous estes a jugement de une part et d'aultre. Et purceo attendet vos jugements.

Et sic pendet.

9B. ELYS *v.* RYGGESBY.[14]

Un William Elis[15] porta son replegiari vers un Rauf et dit qe a tort avoit pris ses avers etc.

Denon avowa la prise qe un Johan de Westone[16] pere une Cecille

[1] Rog. *Q*; Rob. *D.* [2] Rog. *Q*; R. *D.* [3] le dreit des *D*, *Q.* [4] Rog. *Q*; Rob. *D.* [5] *Ins.* serioms *Q*; serroms *D.* [6] Rog. *Q*; Rob. *D.* [7] Thomas *D.* [8] grante *D.* [9] fray *Q.* [10] avowrie en ceo cas *Q.* [11] *Ins.* si *D*, *Q.* [12] mes si vous avet fee en les services et seisine de partie de les services par *Q*; *sim. D.* [13] action et pur lentier destreyndereit *Q.* [14] *Vulg.* p. 61. This second version from *L*: compared with *B*, *M*, *S*, *T*, *Y* (f. 155) and a short report in *X.* [15] Elys *M*; Eleys *P.* [16] Johan West' *Al. Cod.*

whether by virtue of any grant made to you, who have only an estate for life, you can avow upon us for other services than those of which [your grantor] was seised.

Denom. We laid a seisin by the hand of Robert Trussebut, and from Robert the services descended lineally to our conusor,[1] and this seisin you do not deny. And since Thomas, whose estate we have, would be received to this avowry by means of the seisin of Robert, his ancestor, and of his own seisin of a part of the services, we also shall be received to try our estate and the estate of our feoffor. Judgment, whether [we ought not to be answered] to this avowry.

Bereford, C.J. [The avowant] pleads about the seisin of Robert, and [the plaintiff] about the seisin of Thomas, and so the two parties are pleading about different matters. So you must confess whether or not Thomas was seised of the capons and granted them to you, for [the plaintiff] shall not have to plead about the estate of Robert, because Hillaria, through whom [the avowant] traces his descent, may have released and quitclaimed the service of [rendering] capons, and [the avowant] cannot be received to try the seisin or the estate of Robert, the ancestor of his feoffor.

Denom. If a father is seised of fealty and other services by the hand of a tenant, and [after the father's death] his heir obtains seisin only of the fealty, and grants me the services of which his father was seised, can I not make a good avowry? And yet in this case my feoffor would be seised only of the fealty. So here.

Scrope, J.[2] Here you are but a termor for term of life. If you had fee it would be otherwise; for in that case, if you were seised of a part of the services by the conusance of one who had the right to make conusance, then an action would accrue to you, and you might distrain for the whole of the services.

Bereford, C.J. On the one side and the other you have pleaded to judgment. So await your judgments.

And so the action pends.

9b. ELYS *v.* RYGGESBY.

One William Elys brought his replevin against one Ralph and said that wrongfully he took his beasts etc.

Denom avowed the taking for that one John [West], father of

[1] The alienation of the services is supposed to have been made by fine. The record does not bear this out.

[2] Perhaps not the justice but his brother Geoffrey.

femme William tient certeynz tenemenz etc. de Robert Trussebote[1] par homage, feauté et par les services de vj. s. par an et par iiij chapouns par an etc.; des queux services Robert fust seisi par mye la mayn l'avauntdit Johan etc. De Johan descendi[2] ceux tenemenz a Cecille com a fille et heir. De Robert descendi le dreit des services a Johan com a fitz et heir. De Johan a Thomas com a fitz et heir. Le quel Thomas fust seisi de la feauté William et Cecille com du dreit Cecille, et de les vj. s. Le quel Thomas graunta ceux services a Rauf a terme de sa vie, par my quel graunt Rauf seisi de la feauté William et Cecille et de les vj. s. Et pur ceo qe taunt dez chapouns furent arere le jour etc., si avowe il etc. sur William et Cecille sa femme com du dreit Cecille et en son fee.[3]

Hedon. Nous n'avoms rien en ceux tenemenz, si noun com du dreit Cecille nostre femme, et ne pom ceux services mener en jugement saunz nostre femme; et priom eyde de luy.

Grant.[4] La cause pur quey vous dusset eyde avoir si est pur ceo qe vous ne poez estre partie saunz vostre femme. Mès ore n'avez vous rien dit unquore a quei trier vous ne poez estre partie. Jugement, si pur rien qe unque eiez dit devez eyde avoir.

Hedon. Vous avez affermé[5] le dreit par vostre avowerie en nostre femme. Et demandoms jugement del houre qe vous nous avez doné tiel estat qe[6] nous ne poms estre partie saunz Cecille, si de Cecille ne devoms eyde avoir.

Grant.[7] Quel enroulement se freit en ceste cas si le eyde vous fust graunté (en supposaunt la qe[8] ou eyde deit estre graunté si deit le enroulement fere mencioun de chescune cause par quei cely qe prie eyde ad mestier del eyde)?

Ber. Vous n'averez eyde saunz ceo qe vous nous ne diez ascune chose pur quei vous eiez mestier del eide. Par quei ditez outre.

Hedon. La ou Rauf avowe par vertue de un graunt de services qe Thomas le fist, de qi nous tenymes, nous vous diom qe Thomas ne fust unqes seisi de services par queux il ad fet ceste avowerie. Prest, etc.

Denon. Quey responez a la seisine Robert qe fust seisi entierement de services?

Berr. Vous estes estrange purchasour et ne poiez de plus haut

[1] Gersebat *M*; Garsebat *P*. [2] descendirent *M*. [3] In *S* omissions have been made which spoil the report. In *T* some of these have been supplied by interlineation. [4] Migg, *B*; Denom *S*; Grantebreg' *Y*. [5] assigne *S*, *T*. [6] estat a qei *Y*. [7] Hervi *B*; Mutt *S*; Mitt *T*. [8] qe la *Y*.

Cecily, [the plaintiff's] wife, held certain tenements of Robert Trussebut by homage and fealty and the service of six shillings a year and four capons a year etc.; of which services Robert was seised by the hand of John. From John the tenements descended to Cecily as daughter and heir. From Robert the right of the services descended to John[1] as son and heir; and from him to Thomas as son and heir. Thomas was seised of the fealty of William and Cecily in right of Cecily and of the six shillings. Thomas granted these services to the avowant for the term of his life, by virtue of which grant the avowant was seised of the fealty of William and Cecily and of the six shillings. And because so many capons were arrear on the day etc., he avows upon the plaintiff and his wife as in her right and within [the avowant's] fee.

Hedon. We have nothing in these tenements except in right of our wife, and without her we cannot bring these services into judgment, and we pray aid of her.

Cambridge.[2] The alleged cause for your aid prayer is that you cannot be a party without your wife. But as yet you have said nothing, to the trial of which you could not be a [sufficient] party. Judgment, whether, for anything that you have yet said, you ought to have aid.

Hedon. By your avowry you have affirmed the right in our wife. We pray judgment whether we ought not to have aid of her, since you have ascribed to us such an estate that we cannot be a party without her.

Cambridge.[3] What enrolment would be made in this case if the aid were granted you? (His supposition being that when aid is granted the enrolment ought to state some cause which makes the aid necessary.)

Bereford, C.J. You shall not have aid unless you say something that makes aid necessary. So plead over.

Hedon. Whereas [the avowant] avows by virtue of a grant of the services made by Thomas of whom we held, we tell you that Thomas was never seised of the services for which they have made this avowry. Ready etc.

Denom. What do you answer to the seisin of Robert, who was seised of the whole of the services?

Bereford, C.J. You are stranger and purchaser and cannot take

[1] See our note from the record for the true pedigree.

[2] Or Miggel or Denom.

[3] This question is also attributed to Stanton, J.

seisine prendre vostre title qe de cely par qi vous avez estat. Mez ore avez dit en avowaunt qe Thomas vous granta etc., la quele seisine il ad traversee. Par quei il n'est pas mestier q'il respoigne a la seisine del auncestre [1] paramount nyent plus qe a la seisine Roulond ou Olyver, qe de sa seisine n'ad yl a fere.[2]

Denon.[3] Nous avoms dit qe R. fust seisi ut supra entierement des services, de qi descendi etc. a Thomas, le quel Thomas fust seisi de la fealté et de les vj. s. Et del houre qe Thomas freit bone avowerie etc. il semble qe nous qe avoms son estat [4] la ou nous sumes [5] seisi de la fealté et de vj. s. com de parcel des services.[6]

Scrop. Vous n'estes qe termer, mès si usset dreit en les services, seisine de [7] parcele de services attreroit [8] le remenaunt.

{*Den.*[9] Vous ne poez pleder plus halt qe l'estat vostre grantor, mès si le grant fut simple, autre serreit.}

Ber. Volez vous q'estes estraunge estre de auxi bon condicioun de prendre title en avowaunt de la seisine Robert com serroit Thomas q'est son heir [10] (*quasi diceret non*) ? Quia quod nondum erat [11] in persona concedentis nullum [12] erit in persona concessi.[13]

9c. ELYS *v.* RYGGESBY.[14]

William West porta son *replegiari* vers Rauf de Rigg' etc.

Cant. avowa la prise etc. par la reson qe William de West et Cecile sa [15] femme tindrent un mies, une vergé de terre etc. en Brome de Robert Trussebut par homage, fealté et par les services de vij. s. par an et par iiij. capouns et seute a sa court de Brome de iij. simeignes etc., des quex services mesme cesti R. fut seisi par my la mayn Jon piere etc. ; de Robert descendi le dreit a Hillari com a fitz et heir, de H. a Jon cum a fitz et heir, de Jon a Thomas com a fitz et heir, issint qe, après la mort Jon piere celi Cecile, Cecile se attorna a Thomas avauntdit de sa fealté ; après quel attornement mesme cely Thomas granta et assigna les services avantdiz a Rauf a terme de sa

[1] lael *B.* [2] Par qai il nest mestier a respondre a la seisine lautre *S*, *T*. [3] Johane Denom *S* ; Johan Deno' *T*. [4] *Ins.* et nomement *M* ; nomement *Y*. [5] fumes *B*. [6] et de la rente de vj. s. com de parcele de ceux services *M*. [7] services autre seroit qe *B*. [8] attret *B*. [9] From *X*. [10] Thomas qest heir et seisi *S*, *T*. [11] ius fuit *M* ; nudum erat *Y*. [12] nihil *B*. [13] quia quod non erat in persona concedentis nullo modo erit in persona illius cui conceditur *S*, *T* ; concessi *corrected into* illius cui concedatur *Y*. [14] This third version from *R*. [15] *Om.* sa *R*.

your title from any seisin higher than that of him by whom you have your estate. But here you have said in your avowry that the grant was made by Thomas, and his seisin has been traversed by [the plaintiff]. So [the plaintiff] has no need to answer to the seisin of an ancestor higher up, with whose seisin he had nothing to do. You might as well rely on the seisin of Roland or of Oliver.[1]

J. Denom. We have said as above that Robert was seised of the entirety of the services, and that there was a descent to Thomas, who was seised of the fealty and the six shillings. And, since Thomas could make a good avowry, it seems to us that we [can do so], especially as we are seised of the fealty and the six shillings as of parcel of the services.

Scrope, J. You are only a termor. If you had the right[2] of the services and seisin of parcel, then it would be otherwise, for the parcel would attract the residue.

{*Denom.*[3] You cannot plead higher than the estate of your grantor; but if the grant were [in fee] simple, it would be otherwise.}

Bereford, C.J. Do you, who are a stranger, desire to be in as good a condition to take title from Robert in your avowry as that in which Thomas, his heir, would be? No, for what was never in the person of the grantor can in no wise be in the person of the grantee.[4]

9c. ELYS *v.* RYGGESBY.[5]

William [Elys] brought replevin against Ralph de Rygg[esby].

Cambridge avowed the taking [good and lawful] for the reason that William [Elys] and Cecily his wife held a messuage and a virgate of land etc. in [Brunne] of Robert Trussebut by homage, fealty and the services of seven shillings a year and by four capons and suit to his court at [Brunne] from three weeks [to three weeks]; and that of these services Robert was seised by the hand of John, father [of Cecily]; and that from Robert the right descended to [Hillaria as daughter] and heir, and from her to John as son and heir, and from John to Thomas as son and heir; and after the death of John, father of Cecily, Cecily attorned to Thomas for her fealty; and after this attornment Thomas granted and assigned the services to [the avowant] for the term of

[1] The allusion to these mythical heroes is not in all the books.

[2] The right here implies the fee.

[3] This sentence from a set of short reports seems to bring out the point of Scrope's remark. But one at least of the Denoms seems to have been counsel for the avowant.

[4] Observe how in the Latin of some scribes the grantee is the *concessus*.

[5] This report from a single manuscript.

vie; par quel grant et assignement Cecile se attorna a Rauf de sa fealté; et pur qe les iiij. capouns furent arrere iiij. aunz avant le jour de la prise fete, si avowe etc. sur mesmes ceux W. et Cecile com sur ses verreys tenants en mesme le leu com en parcele etc.

Hedon. Vous mesmes avez fet avowerie sur nous et nostre femme com du dreit nostre femme issint qe nous ne poums charger ne descharger sanz ly. Et prioms eyde de ly.

Denom. Vous mesmes avez sustret ceux services de vostre tort, et de vostre tort demene eyde ne devez avoir.

Cant. ad idem. Si vous usset ascune chose pledé en le dreit com a jugement ou al averement, com a dire rien arriere, ceo serriet ascune chose et cause par qey etc., mès depus qe vous ne dites rien etc., jugement, si eyde devez avoir. Et priom retorn. Estre ceo, si le eyde serreit grantable, ceo serreit pur ascune cause, mès vous ne dites nule cause ne nule chose qe chet en le dreit, ne ne dites rien en escusant vostre persone de la detenue de vos services. Par qey etc. D'autrepart si clerk freit bon enroulement 'quod habeat eam hic,' covendreit q'il meit cause precedent pur qey eyde ly fust granté. Jugement.

Hedon. Vous veez bien coment il fet ceste avowerie sur W. et C. par la reson qe J. de West piere Cecile tynt de Robert Trussebut par homage etc. La nous conisoms bien qe J. de West tynt de R. les tenemenz avantditz par fealté et par les services de vij. s. par an pur toux services, et noun par les services pur les quex vous avet avowé. Prist.

Denom. Seoms a un primes de la seisine Robert, la quele seisine, si vous la volez dedire, nous vouloms averer.

Hedon. A la seisine R. n'ay jeo mestier a respondre, qar vous estes purchasour, ou vous ne poet autre estat meyntenir qe l'estat Thomas, par qey vous preites estat. Jugement.

Denom. Si mon piere eit un tenant qe tint de ly par certeynz services, et mon piere seisi des services, et jeo après la mort mon piere r[esceive] sa fealté, pur qey ne pusse jeo granter les services a un estranger après l'attornement? Et si le tenant attorne de sa fealté a ly par my moun grant, jeo cray q'il purra destreindre pur toux les services et lyer la seisine mon piere. Sic ex parte ista. Semble q'il deit respondre a la seisine Robert.

Hedon. Nous vous dioms qe T., par my qi il cleyme estat unqes

his life; and on this grant and assignment Cecily attorned to [the avowant] for her fealty; and because the four capons were arrear for four years before the day of the taking, he avows upon William and Cecily as his very tenants in the place [mentioned in the count] as in parcel of the said tenements.

Hedon. You yourselves have avowed upon us and our wife as in her right, so that without her we cannot charge or discharge the tenements. And we pray aid of her.

Denom. You yourself have subtracted these services by your tort, and you ought not to have aid where the tort is your own.

Cambridge to the same effect. If you had already pleaded some matter of right concluding to a judgment or offering an averment, as for instance, if you had said 'Nothing arrear,' that indeed would be something and a cause [for aid]; but, since you have said nothing [of the kind], we crave judgment whether you should have aid. And we pray a return [of the beasts]. Moreover, if the aid is to be granted, this must be for some cause; but you have shown no cause and no matter of right, and you say nothing to excuse your person for the detention of your services. Wherefore etc. Again, if the clerk is to make a good enrolment by the words 'therefore let him have her [his wife] here,' it behoves him first to set forth some precedent cause for which the aid was granted. Judgment.

Hedon. You see how he makes this avowry upon William and Cecily for the reason that John West, father of Cecily, held of Robert Trussebut by homage etc. We confess that John West held these tenements of Robert by fealty and by the services of seven shillings a year for all services, and not by the services for which he has avowed. Ready etc.

Denom. First let us agree about Robert's seisin [of the services]. If you wish to deny it, we will aver it.

Hedon. To Robert's seisin I need not answer; for you are a purchaser and can maintain no other estate than that of Thomas, from whom you took your estate.

Denom. If my father have a tenant who holds of him by certain services, and my father be seised of those services, and after his death I receive the fealty, why should I not grant the services to a stranger after the attornment? And if on my grant the tenant attorn to this stranger for his fealty, I believe that [the grantee] can distrain for all the services and lay the seisin in my father. So in this case. It seems that [the plaintiff] must answer to Robert's seisin.

Hedon. We tell you that Thomas, by whom [the avowant] claims

ne fut seisi des services pur les quex il ore avowe, prist etc., scil. de les iiij. chapons.

Cant. Sanz seisine ne put homme avower. Par qey covent qe vous r[espoignez] a la seisine Robert.

Hedon. Et nous jugement, desicom nous tendoms d'averer qe T. vostre feffor unqes ne fut seisi de ceux services pur les quex vous avowet issint q'il pout estat fere. Et vous cel averement refuset. Jugement.

Berr. Vous pledez a divers costés, qar vous pledez a la seisine R., par qey vous ne preites nul estat. Et plus naturelement devez meyntenir l'estat T. vostre feffour qe l'estat R. Et il vous dient qe T. ne fut unqes seisi des services pur quex vous avowet issint q'il vous pout estat fere. Et merveilouse chose serreit si T., qe nul estat des services pur les quex vous avowet n'avoit, a ceo q'il tent d'averer, pout a vous estat fere.

Denom. Asset avoit T. estat en les services qaunt R., son auncestre, qy heir il est, fut seisi enterementers de toux les services et le tenant attorne a ly de fealté en conusaunt toux les services après la mort son auncestre. Par qey jugement *ut supra*. Et si vous veet qe nous devom al averement respondre, prioms eyde de Thomas en qy persone le fee et le dreit des services demort, sanz qe nous ne poums cest respons mener en jugement.

Hedon. Nous prioms eyde nostre femme, qe sanz ly ne poums ceste averement attendre.

Et habuit diem, prece partium, in quindena Pasche.

Note from the Record.

De Banco Roll, Hilary, 3 Edw. II. (No. 180), r. 52d, Camb.

Ralph de Ryggesby was summoned to answer William Elys in a plea of replevin. The taking is laid on [4 April 1309] Friday in Easter week in 2 Edw. II., in the vill of Brunne,[1] in the place that is called la Crofte; two horses were taken; damages, forty shillings.

Ralph, by his attorney, after formal defence, avows the taking as good and lawful, for he says that one John West, father of one Cecily, wife of the plaintiff, whose heir she is, held of one Robert Trussebut a messuage and the moiety of a virgate of land in the said vill by homage and fealty and the service of seven shillings and four capons a year, and by doing suit to Robert's court at Brunne from three weeks to three weeks; and that of the homage, fealty and service Robert was seised by the hands of John; and that from Robert the right of the said services descended to one Hillaria as daughter and heir, and from her to one John as son and heir, and from him

[1] Mod. Bourn.

his estate, was never seised of the services for which he now avows, to wit, the four capons. Ready etc.

Cambridge. There can be no avowry without seisin. So you must answer to the seisin of Robert.

Hedon. We on our part pray judgment, since we have tendered to aver that Thomas, your feoffor, was never seised of the services for which you avow in such wise that he could make an estate [to you], and this averment you refuse. Judgment.

Bereford, C.J. You are pleading towards different issues. [The avowant] pleads about the seisin of Robert, from whom he took no estate. It would be much more natural for him to maintain the estate of Thomas, his feoffor, than that of Robert. And [for the plaintiff] it is said that Thomas was never seised of the services for which the avowry is made in such wise that he could make an estate. A wonderful thing it would be if Thomas, who, according to the averment that is tendered, had no estate in the services for which the avowry is made, could make an estate to you!

Denom. Thomas had estate enough in the services when Robert, whose heir he is, was seised of all the services, and when, after the death of his ancestor, the tenant attorned to him [Thomas] for fealty and thereby confessed all the services. Therefore we pray judgment as before. And if you hold that we ought to answer to the averment, then we pray aid of Thomas, in whose person the fee and right of the services dwell, and without whom we cannot bring this answer to judgment.

Hedon. We pray aid of our wife, without whom we cannot abide this averment.[1]

A day was given, by prayer of the parties, on the quindene of Easter.

Note from the Record (*continued*).

to one Thomas as son and heir; and that Thomas was seised of the homage and fealty and the service of the said seven shillings by the hands of William and Cecily, in right of Cecily; and that Thomas granted and demised the said services to Ralph [the avowant] to hold for the term of Ralph's life; and that, by reason of this grant, William and Cecily attorned to Ralph and did him fealty etc.; and that, because the said service of four capons was arrear for four years before the day of the taking, he [Ralph] took the horses in the said place, which is part of the said tenements.

The entry ends with this avowry. A *cras* is set in the margin of the roll as if the argument was to be resumed.

[1] The avowant's aid-prayer and the plaintiff's aid-prayer after pleading are peculiarities of this third report.

10A. KENYNGTON *v.* CORNWALL (COUNTESS OF).[1]

Replegiari, ou piert qe par assignement de dower du manier la femme avera mye avowrie pur relefe dewe devaunt le assignement.

Replegiari, ou femme tenante en dower avowa pur relef la ou le tenant devia vyvant son baron.

Neel[2] de Kyngestone[3] porta le *replegiari* vers la Countesse de Cornwaille de ses averes etc.

Hedon. La Countesse avowe etc. par la resoun q'une Sare[4] jadiz tient de Edmund[5] Counte de Cornwaille etc. par service de chivalerie, scil. etc., des queux services il fust seisi etc. Et après le decès Edmund, le Roi seisi le counté en sa mayn etc. et assigna a nous le manier de K. etc. en dowere, et pur releef arere après la mort Sare si avowoms etc. sur l'eyr etc.

Wilegh.[6] Ceo releef fust dwe[7] au temps qe vostre baroun fust en vye, en quel temps dower ne vous fust point assigné. Et desicome cest assignement de dowere est de puisné temps qe ne soit le releef, jugement si pur[8] releef en temps vostre baroun ou action ne vous fust acru a cel releef demander si noun par my l'asignement de dowere qe fust de pusnee temps qe ne seit le releef, si sour heir Sarre pur releef arere puissetz avower etc.[9] Item plus tost averoient les executours le Counte actioun a cel releef etc.[10]

Hedon. Vous estes estraunge al avowrie. En vostre bouche ne gist il mye de countrepleder nostre avowrie. Jugement etc.

Toud. Eietz vostre aquitaunce vers les heirs Sare.

Ber. Il ne plede mie pur vous ouster, mès tauntsoulment a un temps, a quel temps action a demaunder[11] releef ne vous fust point acreu, et de ceo demaundent[12] jugement.

Hedon. Et nous jugement, depus q'il est estraunge a nostre avowrie, si en sa bouche gist a countrepleder[13] etc.

[1] Text of this first version from *A*: compared with *D*, *Q*. Headnotes from *A* and *B*. [2] Noel *D*. [3] Reynyngtone *Q*. [4] un W. *Q*. [5] Edward *Q*; Esmon *D*. [6] Willuby *Q*. [7] done *D*, *Q*. [8] *Ins.* nul *D*, *Q*. [9] vostre baroun etc. *A*; *text from Q*; *sim. D*. [10] action a destreindre pur le releef qe vous etc. *Q*; *sim. D*. [11] *Ins.* ceste *D*, *Q*. [12] dd' il *D*. [13] *Ins.* nostre demande *Q*; de contrepleder nostre damage *D*.

10A. KENYNGTON *v.* CORNWALL (COUNTESS OF).[1]

Qu. whether a doweress to whom a manor is assigned is entitled to a relief that became due on the death of a tenant during her husband's lifetime. If the husband's executors are entitled, can this objection be taken by a plaintiff in replevin upon whom the avowry is not made?

[Nigel of Kenyngton] brought replevin against the Countess of Cornwall for his beasts etc.

Hedon. The Countess avows etc. for the reason that one Sarah formerly held of Edmund Earl of Cornwall by knight's service, to wit etc., of which services he was seised etc. And after the decease of Edmund, the King seized the county into his hand etc. and assigned to us the manor of K. in dower; and for a relief due after the death of Sarah we avow upon the heir etc.[2]

Willoughby. This relief became due in your husband's lifetime, at which time dower was not assigned to you. And since this assignment of dower is later than the relief, we pray judgment whether [you can avow] upon Sarah's heir for a relief that became due in the lifetime of your husband by virtue of this assignment of dower which is of later date. This action for the relief[3] would belong to the executors of the Earl rather than to you.

Hedon. It does not lie in your mouth to counterplead our avowry, for you are a stranger to it.[4] Judgment etc.

Toudeby. You [the plaintiff] must look to Sarah's heir for indemnity.

Bereford, C.J. He is not pleading to oust you [from your seignory] but he only pleads as to a question of time: namely, the time at which an action for the relief accrued to you. About this he prays judgment.

Hedon. And we also pray judgment whether it lies in his mouth to counterplead our avowry as he is a stranger to it.

[1] Proper names from the record.

[2] It appears in the other report that the plaintiff is Sarah's husband, and so he may be tenant by the curtesy.

[3] Or 'action to distrain for the relief.'

[4] The avowry was upon the heirs of Sarah.

10b. KENYNGTON *v.* CORNWALL (COUNTESS OF).[1]

Margarete qe fust la femme jadis Edmund Counte de Cornwaylle fust[2] somouns a respoundre a Roger etc. en plee de prise des avers.

Will. Margarete avowe[3] la prise etc. par la reson qe Roger et Sarre sa femme tynent[4] certeynz tenemenz dount le lieu etc. com du dreit Sarre de Edmund jadis son baron par homage et par le service de un fee de chivaler etc.; des queux services l'avantdit Edmund fust seisi par mye les meyns avauntdiz Roger et Sarre com du dreit Sarre, les queux services furent assignez par nostre seignour le Roy a Margarete en noun de dowere après le mort Edmund son baron, par quel assignement Roger et Sarre se attournerent a Margarete de lour feauté et de lour services com de dreit Sarre: et pur ceo qe c. s.[5] de releef après la mort Sarre etc. le jour de la prise, si avowe ele sur A. et B. com sur filles Sarre et un heir com[6] sur sa tenaunte[7] et en son fee.

Hedone. Sire, la ou Margarete fet cel avowerie etc. com pur releef dewe de la mort Sarre, Sire, nous vous diom qe Sarre, pur releef de qi mort ceste avowerie est fete, morust avaunt Edmund etc. baron la dame. Et demandoms jugement si pur releef de la mort cele qe morust avaunt qe nul estat de dowere[8] avoit,[9] pusse par reson de dowere avower,[10] qe si releef seit[11] dwe l'accion est[12] reservé a les executours le Counte.[13]

Will. La ou vous ditez qe nous avoms avowé pur releeff de la mort Sarre qe morust avaunt ceo qe nous avyom estat, taunt amounte vostre respouns com si vous deissez qe Sarre ne morust nyent nostre tenaunt; et a ceo ne devez vous estre receu que estes tut estraunge a nostre avowerie, a qi bouche tiel respons ne gist mye.

Ber. Il vous dit q'il est tenaunt, coment dounque deschargeroit il en autre manere sa[14] tenaunce si noun en ceste manere?

Et sic pendet.[15]

[1] *Vulg.* p. 60. Text from *L*; compared with *B*, *S*, *T*. [2] et autres nometz en le brief furent *B*; *sim. S*, *T*. [3] *Ins.* pur luy et pur les autres *B*; *sim. S*, *T*. [4] tindrent *B*. [5] v. s. *B*, *S*, *T*. [6] con *L*. [7] en sa tenaunce *B*. [8] estat de assignement en douwere *B*. [9] avaunt qe accion de douwer a ly acrust *S*, *T*. [10] pussetz avowere faire ou de plus tardyf temps avower *B*. [11] fust *B*. [12] serra *B*. [13] al Counte ou ses executours *B*. [14] il soule sa *S*; il soul sa *T*. [15] sil ne fust a tiel r[espouns] r[ece]u etc. *B*; *sim. S*, *T*. *Om.* Et . . . pendet *B*, *S*.

10B. KENYNGTON *v.* CORNWALL (COUNTESS OF).

Margaret, wife that was of Edmund, sometime Earl of Cornwall, was summoned to answer one Roger in a plea for the taking of beasts.

Willoughby. Margaret avows the taking etc. because Roger and Sarah his wife, in right of Sarah, held certain tenements, whereof the *locus in quo* is parcel, of Edmund, late husband of the avowant, by homage and the service of a knight's fee.[1] And of these services Edmund was seised by the hands of Roger and Sarah as in the right of Sarah. And these services were assigned by the King to the avowant by way of dower after the death of Edmund her husband. And upon this assignment Roger and Sarah attorned themselves to the avowant for their fealty and their services as in the right of Sarah. And for that a hundred shillings for relief [were due] after the death of Sarah on the day of the taking, the avowant avows the taking upon A. and B., the daughters and one heir of Sarah, in their tenancy and in [the avowant's] fee.

Hedon. Whereas Margaret makes this avowry as for a relief due upon Sarah's death, we tell you, Sir, that Sarah, for a relief upon whose death this avowry is made, died before Edmund, this lady's husband. And we pray judgment whether she can avow by reason of her dower for a relief that became due before she had any estate of dower, for, if a relief be due, the action for it is reserved to the Earl's executors.

Willoughby. Whereas you say that we have avowed for the relief on the death of Sarah, who died before we had an estate, your answer is tantamount to saying that Sarah did not die our tenant; and to that you cannot be received, for you are a total stranger to our avowry, and such an answer lies not in your mouth.

Bereford, C.J. He tells you that he is tenant. How then could he discharge his tenancy in any other manner than this?[2]

And so the case pends.[3]

[1] See our note from the record. The plaintiff (miscalled Roger) may be Sarah's second husband, but the avowant did not allege seisin by the plaintiff's hand.

[2] Or, 'How then could he alone discharge his tenancy?'

[3] Not all of our books mention this.

Note from the Record.

De Banco Roll, Hilary, 3 Edw. II. (No. 180), r. 58d, Suff.

Margaret, sometime wife of Edmund late Earl of Cornwall, was summoned to answer Nigel de Kenyngton, why, together with Elias de Boys, she took his beasts and detained them against gage and pledge. Nigel, by Adam de Westhale his attorney, says that on [15 June, 1307] Thursday next after the feast of St. Barnabas the Apostle in 35 Edw. I., in the vill of Debenham, in the place called Sladisfeld, two cows were taken; and that on [26 June, 1307] Monday next after the Nativity of St. John Baptist in the same year, in the vill and place aforesaid, two steers were taken; and that on [30 June, 1307] Friday next after the Nativity of St. John Baptist in the same year, in the vill of Kenyngton, in the place called Horniscroft, a steer and two heifers were taken: damages, twenty marks.[1]

Margaret, by Adam de Brom her attorney, after formal defence, answers for herself and Elias, and avows the taking, for she says that Robert de Lyvermere, John de Thorpe, Robert de Ufford and Cecily his wife, Edmund de Pakenham and Roesia his wife, as in right of the said Robert de Lyvermere, John, Cecily and Roesia, hold of the avowant the manor of Kenyngton by homage and fealty and the service of one knight, by doing suit to the avowant's court at Eye from three weeks to three weeks, and by rendering to the ward of the castle of Eye in every two years five shillings, at three terms in the year, twenty pence at every term; and that of these services

11. ANON.

Monstravit, ou le parole demora sauncz jour après q'il avoyt pledé al enquest par protecciouu.

Après[2] ceo qe la partie avoit pledé al enqueste en un *monstravit* et trové meynprise d'attendre l'enqueste, il porta la protectioun,[3] et fust allowé et la paroulle demorra saunt jour.

Si[4] aliqua loquela remansit sine die per protexionem domini Regis usque ad certum diem infra quem Rex obiit[5] (quod absit) breve de resummonitione non debet facere mentionem de morte domini Regis, immo de protexione tantummodo, quia eadem causa qua loquela remansit sine die eadem et non alia debet resummoneri: per Galfridum de Hertepol et Gilebertum de Toudeby[6]; non obstante quod omnia placita mota per mortem domini Regis sine die remanebunt.

[1] Debenham and Kenton lie close together. [2] Text of the first note from *A*; compared with *Q*. [3] la prohibicion le Roy *Q*. [4] *Vulg.* p. 60. This second note from *P*: compared with *B* and shorter notes in *S*, *T*, *X*. [5] obierit *B*. [6] per E. et G. de T. *B*.

Note from the Record (*continued*).

the Earl, her late husband, was seised by the hands of Roger le Fiz Oubern and Sarra his wife, as in Sarra's right; and that after the Earl's death the service of Roger and Sarra was assigned to the avowant in the Chancery, to hold by way of dower; and, because a hundred shillings for the relief for the said fee on the death of Sarra were due to the avowant at the time of the said takings, she avows those takings upon Robert de Livermere and the others, as cousins and heirs of Sarra, in the said places within the said manor and within her [the avowant's] fee.

Afterwards a day is given *prece partium* on the octave of Trinity without essoin. No more of this case has been found.

Another entry on the roll (r. 290d, Suff.) shows another action between the same parties in which the Countess is charged with having again distrained for the same cause, pending the action of replevin. The Countess denies that this distress is for the same cause, and proceeds to avow upon the same persons upon whom her other avowry was made, but for suit of court arrear for three years. Her plea ends with a renewed denial that the new distress was for the old cause, for she then distrained for the relief due upon Sarra's death; and this she is ready to aver. Nigel replies that she took the beasts for the same cause and pending the plea. Issue is joined, and a *venire facias* is awarded for the octave of Trinity. There are adjournments to the morrow of All Souls and to Easter quindene.

11. ANON.

Notes on writs of protection and the demise of the Crown and the resummons of actions.

In an action of account (*monstravit de compoto*) the defendant had pleaded to inquest and had found mainprise to abide the inquest. Then he brought a writ of protection.[1] It was allowed, and the action stood over *sine die*.

If[2] by reason of the King's [writ of] protection a plea shall stand over to a day certain, and before that day the King shall die (which God forbid), the writ of resummons ought to make mention, not of the King's death, but only of the protection, for the plea is to be resummoned for the same cause for which it stood over and not for any other cause: *per* Geoffrey of Hartlepool and Gilbert of Toudeby[3]; and this notwithstanding that by the King's death all pleas shall stand over without day.

[1] One book says 'prohibition.'

[2] These two notes come from two different sets of MSS. Whether they arose out of one case must be doubtful.

[3] Not justices, but leading counsel.

12. BOXENDONE *v.* HALIBURNE.[1]

Replegiari. Si jeo avowe cum sour tenaunt en dower, et el ne cleime rien en dower, einz a terme de vie, il moy covient moustrer coment el tient en dower.

Replegiari, ou il avowa sour femme tenante en douwere en liant seisine parmy sa mayn, et ele dit qe les tenementz luy furent grantez a terme de sa vie.

Replegiari, ou avoweree fut fet sur tenant en douwer pur serviz arere, ou ele clama terme de vie par fet qe descharge la tenance.

Katerine de C. porta le *replegiari* vers J. de B.[2] et dit q'a tort prist ses averes etc.

West.[3] avowa pur la resoun qe meisme ceste K. tient de luy mesme ceaux tenemenz ou la prise etc.[4] en dower par fealté et par les services de xvj. d.[5] par an, des queux services il fust seisi par my la mayn mesme ceste K. com par my la main etc. Et pur les xvj. d. arere d'un an avaunt le jour de la prise si avowe il etc.

{Katerine[6] qe fut la femme Robert Wuxindoun porta son replegiari vers Jon de Stalbryg et se pleint qe a tort prist un son chival etc.

Pass. pur J. avowa la prise bone et dreiturele par la reson qe l'avantdit K. tient de ly un mies en noun de dowere par fealté et par les services de v. s. iiij. d. par an, des quex services mesme cesti Johan fust seisi par la mayn[7] K. etc. et pur les iiij. d. arrere de tiel terme etc.}

Scrop. Vous n'avietz pas dit de qi heritage ne de qi dowement ele tient en dower. Jugement si a tiel avowrie etc.[8]

West.[9] Il n'est pas mestier a dire de qi dowement, qe la cause de l'avowerie[10] est purceo qe vous tenet de nous en dower, et ovesqe ceo la seisine des services. Et c'est un bref de possessioun, et avoms lié la seisine et la tenaunce en vostre persone. Jugement etc. si nostre avowrie etc.[11]

Berr. L'avowrie en dreit de ceo point est asset bon.[12]

[1] *Vulg.* p. 64. Text from *A*: compared with *D*, *Q*, with *M class* (= *B*, *L*, *M*, *P*, *S*, *T*), with *R* and with a short version in *X*. Headnotes from *A*, *B*, *S*. [2] vers un Thomas, *M class*. [3] Pass. *M class*. [4] *Om.* etc. *A*. [5] viij. s. *M class*. [6] From *R*. [7] *Om.* par . . . mayn *R*. [8] Scrope, Justice: De qi dowement et de qi assignement, qe ceo covent dire ou vous la suppose estre tenant en dowere, *M class*, *but om.* Justice *B*, *L*, *S*, *T*. [9] *Om.* this and next speech *M class*, *but ins.* Pass. Del assignement un Robert *B*, *S*, *T*. [10] de lavowerie *Q*, *D*; del dower *A*. [11] To same effect, but in other words, *R*. [12] Berr. Dites outre *R*.

12. BOXENDONE *v.* HALIBURNE.[1]

An avowry for services arrear upon a woman as upon the avowant's tenant in dower, with an allegation of seisin by her hand, is [not ?] sufficient without disclosing more. In the present case the woman, in order to show that she is not tenant in dower, produces a lease for life without service made by her husband's heir. The avowant, who derives his rights from the heir, is driven to an averment as to the nature of the woman's tenancy, notwithstanding his allegation that the woman attorned to him as tenant in dower and that he is seised of her services.

Katherine of B. brought replevin against John and said that wrongfully he took her beasts etc.[2]

Westcote avowed for the reason that the plaintiff held of the avowant these same tenements in which the taking was made in dower by fealty and the services of sixteen pence a year, and that the avowant was seised by the hand of the plaintiff as by the hand [of his very tenant]; and for the sixteen pence a year arrear for one year before the day of the taking he avows etc.

{Katherine,[3] wife that was of Robert [Boxendone], brought her replevin against John of [Haliburne] and complained that wrongfully he took a horse of hers etc.

Passeley, for John, avowed the distress good and rightful, for the reason that the plaintiff held of him a messuage by way of dower by fealty and the service of five shillings and four pence a year, of which service he was seised by the plaintiff's hand, and for the four pence arrear at such a term [he avowed] etc.}

Scrope. You have not said of whose heritage or by whose endowment she holds in dower. Judgment, whether to such an avowry [you ought to be answered].

Westcote. There is no need to say by whose endowment, for the cause of the avowry is [simply] that she holds of us in dower, and also that we are seised of the services. This is a possessory writ, and we have laid the seisin and the tenancy in your person. Judgment, whether our avowry [be not good enough].

Bereford, C.J. As to this matter the avowry is good enough. [Plead over.][4]

[1] Proper names from the record.

[2] In this instance we endeavour by way of experiment to combine three versions of one case. See the opposite page.

[3] This bracketed passage from Version 3.

[4] But see the record and the various readings.

Scrop.[1] La ou il avowe sur K. com sur sa tenaunt en dower, K., vous dit qe H.[2] heir soun baroun[3] luy lessa[4] mesme les tenemenz en queux l'avowrie est ore fait pur terme de sa vie pur soun dowere.[5] Issint ne cleyme ele mye a tenir en dowere, einz a terme de vie du lees H. par ceo fait qe cy est.[6] Jugement, si sur luy com sur sa tenaunt en dowere[7] poet avower. (Et mist avaunt fait qe testmoigna q'il avoit les tenemenz du lees H. etc.[8] a terme de sa vie pur soun dower quites de tot maniere des services.[9])

Pass. Nous avowé avoms sur vous com sur nostre tenaunt en dowere, et[10] estes torné a nous de vos services, et au fait qe vous mettetz avaunt nous ne poums estre partie, fors tauntsoulment lyer nostre possessioun et[11] la tenaunce, et ceo avoms fait. Et vous com tenaunt en dowere estes atorné a nous.[12] Jugement etc.[13]

Berr. Il mettent avaunt le fait H., qe power avoit de luy lesser les tenemenz pur soun dower, et si vous voletz dire q'ele tient en[14] dower, il covent moustrer coment ele est tenaunte etc.

West.[15] H. graunta[16] la revercioun de mesme les tenemenz a S., par quele graunt ele se atourna a nous com tenaunt en dower.[17] Et demaundoms jugement desicome par le graunt H. ele se atourna a S. et pus a A. et pus a nous com tenaunt en[18] dower, et nous n'avoms plus a pleder fors d'averer nostre possessioun et la tenaunce,[19] jugement si sur luy com sur tenaunt en dower ne devoms avowrie faire.

{[20] *Pass.*[21] Mesme celui Robert de qi ele parle assigna ceux tenemenz[22] en noun de dower del dowement etc. et pus granta la reversion de ceux tenemenz a un David Scot,[23] par quel grant ele se attorna et[24] seisi etc., et pus David granta la reversion de mesmes ceux tenemenz a nous, par quele grant ele[25] se attorna a nous et nous seisi etc. Prest d'averrer.}

{*West.*[26] Nous conisoms bien qe les tenemenz furent en ascun temps en la seisine Hamond, le qel Hamond assigna ces tenemenz a mesme ceste K. en dower a tenir par les services avantditz; le quel

[1] Denum *R.* [2] Hamound *Q*, *D.* [3] qe un Robert *M class*; Hamond de Wuxind' *R.* [4] graunta *M class.* [5] vie par son fet qe cy est et sanz nul manere des services *M class.* [6] *Om.* sentence *M class*, *R.* [7] *Ins.* pur ces services *Q.* [8] qe H. luy lessa les tenemenz pur queux etc. *Q.* [9] *Om.* this sentence *M class*, *R.* [10] *Ins.* vous *Q.* [11] a *Q.* [12] *Om.* a nous *Q.* [13] Pass. Nous avoms lie nostre avowerie de nostre seisine demene, a qei ele ne respount mye mes plede au gros de la tenaunce. Et prioms retorn *M class.* [14] *Ins.* noun de *D*, *Q.* [15] Pass. *M.* [16] Westcote. Sire volunters. H. graunta *Q*; *sim.* *D.* [17] attorna com avant *D*, *Q.* *Ins.* et demandoms jugement si S. granta a A. et A. a nous et ele attorna a nous come en noun de dower *D.* [18] nous et tient com en noun de *Q.* [19] et lattornement *Q.* [20] From the *M class.* [21] King *B*, *S*, *T.* [22] *Ins.* a luy *L.* [23] *Om.* Scot *B*, *S*, *T.* [24] *Ins.* David *B*, *S*, *T.* [25] *Om.* ele *M.* [26] From *R.*

Scrope. Whereas he avows upon Katherine as upon his tenant in dower, she tells you that Hamond,[1] her husband's heir, leased these tenements, in which the avowry is now made, to her for the term of her life without any manner of services.[2] Thus she does not claim to hold in dower, but claims to hold by the lease of H. made by a deed which we produce. Judgment, whether he can avow upon her as upon his tenant in dower. (And he produced a deed which witnessed that she had the tenements by the lease of Hamond for term of her life [in exchange] for her dower [3] quit of all manner of services.)

Passeley. We have avowed upon you as upon our tenant in dower, and you are attorned to us for your services, and to [try the] deed which you produce we can be no party. We have simply to lay [in your person] the possession and the tenancy, and that we have done. And you, as tenant in dower, are attorned to us. Judgment etc.

Bereford, C.J. They put forward the deed of Hamond, who had power to lease the tenements to her [in lieu of] dower; and, that being so, if you wish to say that she holds in dower, you must show how.

Westcote. [Very well, Sir.] Hamond granted the reversion of the tenements to S., on which grant she attorned [to us][4] as tenant in dower. And since on the grant of Hamond she attorned to S. and then to A. and then to us as tenant in dower, and since we are not put to plead anything beyond an averment of our possession and the tenancy, we demand judgment whether we cannot avow upon her as upon our tenant in dower.

{*Passeley.*[5] This same [Hamond] of whom she speaks assigned these tenements to her by way of dower on the endowment etc., and then granted the reversion to one David Scot; on which grant she attorned; and then David granted the reversion to us; and on this grant she attorned to us, and we were seised. Ready to aver.}

{*Westcote.*[6] We freely confess that the tenements were at one time in Hamond's seisin. And he assigned them to the plaintiff in dower to hold by the said services; and he granted the reversion

[1] In one version 'Robert.'

[2] Some books say 'for her dower.'

[3] The distinction is between holding in dower by the heir's assignment and holding under a lease for life granted by the heir in lieu of dower. It is to be remembered that a doweress is 'attendant to the heir for a third part of the services for which he is attendant over.' See Co. Lit. 31a, Hale's note.

[4] Omit 'to us.'

[5] This from Version 2.

[6] This from Version 3. The other Versions have endeavoured to simplify the story, which involved three assignments of the reversion.

Hamond granta la revercion de ceux tenemenz ove les services avantdiz a Davi le Scot, par quel grant K. se attorna com tenant en dowere ; le quel Davi granta la revercion etc. a Rauf le fitz Pier, par quel grant ele se attorna a R. com tenant en dowere ; le quel R. granta etc. a mesme cesti Jon q'ore avowe, par qel grant ele se attorna a Jon com tenant en dowere des services, et issint est il seisi ; et, desicom nous voloms averer q'ele s'atorna a nous com tenant en dowere et nous seisi et Rauf, par my qy nous avoms estat, seisi, jugement si a cele avowerie ne devoms estre r[espond]u.}

Scrop.[1] Et nous jugement depus qe nous ne clamoms point a tenir ceaux tenemenz en dower, einz a terme de vie du lees H. ; et en prove de ceo lees nous avoms mys avaunt le fait H., et par my[2] l'attournement qe nous avoms fait par le graunt H. ne poet nostre estat ne nostre tenaunce estre chaungé ;[3] et H. mesme, s'il fust par voie d'avowrie, ne pout sur nous come sur tenaunte en dowere avower ; et vous n'avetz rien si noun par my lui. Jugement si etc.[4]

Pass. Nous n'avoms pas mestier[5] pleder a l'estat H., fors a nostre estat demene et l'estat nostre feffour, et desicome vous attornastes a nostre feffour et a nous[6] come tenaunt en dowere, jugement si sur vous come sur tenaunt en dowere ne devoms avower.

Scrop. Si jeo lesse tenemenz a une femme a terme de sa vie, et pus jeo graunte la revercioun de[7] mesme les tenemenz a vous par fyn,[8] et vous suetz le *quid iuris clamat* vers la femme par la resoun qe jeo vous grauntai[9] la reversioun de mesme les tenemenz come de tenemenz[10] qe ceste femme tient de moun heritage en[11] dower, et ele ne cleime rien tenir en[12] dower, le bref se abatera et la femme ne se attornera mye pur la variaunce etc.[13] Auxi par de cea.

West. N'est pas semblable, q'en ceo cas ele ne se attournera[14] mye, mès en le cas ou nous sumes ele se attourna a nous come tenaunt en[15] dower.

Denom. Si jeo porte bref de wast vers ma tenaunt en supposaunt q'ele tient en[16] dower, la ou ele tient de moun lees, le bref se abatera. Auxint de ceste part.

Pass. Solomc la conissaunce et l'attournement avoms avowé, mès

[1] From this point *M* diverges from *A*, but the discussion follows the same lines. The conclusion of the report in *M* is given below. In *R* also the discussion diverges at about this point and the residue is given below. [2] nul *D*. [3] charge *D*, *Q*. [4] *Om.* etc. *A* ; si sur nous etc. *D*. [5] *Ins.* a *D*, *Q*. [6] *Ins.* meismes *D*. [7] *Om.* la . . . de *D*. [8] *Om.* par fyn *D*. [9] grauntasse *Q*. [10] *Om.* come de tenemenz *D*, *Q*. [11] *Ins.* noun de *D*, *Q*. [12] *Ins.* noun de *D*, *Q*. [13] variaunce entre la conisaunce et la fyn *Q* ; *sim. D*. [14] attorna *Q*. [15] come en noun de *D*. [16] *Ins.* noun de *D*.

together with the said services to David the Scot; and on this grant the plaintiff attorned as tenant in dower; and David granted the reversion to Ralph the son of Piers; and on this grant the plaintiff attorned as tenant in dower; and Ralph granted [the reversion] to John the avowant; and on this grant the plaintiff attorned for the services to John as tenant in dower; and so he was seised. And we pray judgment whether we ought not to be answered to this avowry, since we are willing to aver that she attorned to us as tenant in dower and that we were seised, and that Ralph, through whom we have our estate, was seised.]

Scrope. And we on our side pray judgment, since we do not claim to hold these tenements in dower, but claim to hold them for life by the lease of Hamond, and in proof of this we have produced his deed; and by the attornment which we made upon Hamond's grant our estate and our tenancy cannot be changed; and he himself, if he were avowing, could not avow upon us as tenant in dower, and you have nothing except through him. Judgment etc.

Passeley. We have no need to plead about the estate of Hamond. We have to plead only of our own estate and that of our feoffor.[1] And since you attorned as tenant in dower to our feoffor and to us, we pray judgment whether we cannot avow upon you as tenant in dower.

Scrope. If I lease tenements to a woman for term of her life, and afterwards I grant the reversion of the tenements to you by fine, and you sue the *quid iuris clamat* against the woman on the ground that I have granted to you the reversion of the tenements as of tenements which this woman holds of my inheritance in dower, and then [when summoned] she claims nothing in dower, the writ will abate; and, because of the variance between the fine and her confession, she will not have to attorn. So in this case.

Westcote. That is not a similar case. There she will not attorn; here she did attorn to us as our tenant in dower.

Denom. If I bring a writ of waste against a tenant supposing [in it] that she holds in dower, whereas she holds by my lease, the writ will abate. So here.

Passeley. We have avowed in accordance with the conusance and

[1] Apparently the person who made the grant of the reversion to the avowant.

la conissaunce fust fait de cele qe tient en[1] dowere, et de cele[2] estat come tenaunt en dower est ele attourné. Jugement, si nostre avowrie ne soit asset bon.

Berr. Ne poet il estre qe K. tient ceaux tenemenz en dower del heritage H. et[3] H. avoit graunté la revercioun de mesme ceaux tenemenz a S., et[4] K. pus après se eust demys et repris aultrefethe[5] a terme de sa vie du lees H., et qe pus après ele se eust attorné a S.? Par qei il semble qe l'averement i gist q'ele ne tient pas en dower.

Scrop. Qe ele tient ceaux tenemenz du lees H. a terme etc.,[6] et nient en dower auxi com vous supposet. Prest etc.

Et alii econtra.

{*Ber.*[7] Il put estre q'ele[8] tynt adeprimes[9] en noun de dowere et q'ele rendi al heir mesmes les tenemenz et reprist estat a terme de vie et par ceo fet, et issi la nature de sa tenance adeprimes[10] chaungé. Par qei jeo demande si vous voilletz l'averrement q'ele tynt en dowere solonc le purport del escript qe vous avez avantmys, et nent a terme de vie solonc le fet[11] qe l'autre partye ad mys, qe l'un et l'autre chiet en evidence.

Pass. Q'ele tynt en dowere etc.

Et alii econtra qe a terme de vie.[12]}

{*Scrop.*[13] Par forme de lei il i ad divers avoweries sur tenant en dowere et tenant a terme de vie. Mès jeo pose qe Hamond ust granté la revercion des tenemenz cum des tenemenz tenuz en dowere a J. qe ore avowe, et J. seuit le *quid iuris clamat* vers K., et ele vensit en court et conisseit son estat q'est a terme de vie, contrariant a la conisaunce, et dit qe par cele conisaunce ele ne se deit attorner, la court ne agardereit pas attornement. Par qey sur K. comme sur tenant en dower ne poet avowerie fere.

Pass. Vous veet bien coment nous avoms dit en avowant qe R. parmy qy nous preimes estat fut seisi, et ele a J. comme tenant en

[1] de celuy de qy vous tenistes en noun de *Q.* [2] tiel *D.* [3] *Ins.* qe *D, Q.* [4] *Ins.* qe *D, Q,* [5] *Ins.* ceux tenemenz *Q*; estat de ceux tenemenz *D.* [6] *Om.* etc. *D*; terme de sa vie *Q.* [7] From the *M class*, in which the passage here enclosed in brackets represents the end of a debate similar to that which has been already reported. [8] qil *M*; qele *Al. Cod.* [9] primes *L.* [10] *Om.* adeprimes *B, S, T*; de sa premere tenance *L.* [11] le purport dil escript *B.* [12] *Om.* qe . . vie *B, S, T.* [13] From *R*, in which the passage here enclosed in brackets represents the main part of the discussion.

the attornment, and the conusance was made [of the reversion of tenements] which she held in dower,[1] and of that estate as tenant in dower she is attorned. Judgment whether our avowry be not good enough.

Bereford, C.J. May not the case be that Katherine did hold these tenements in dower of the heritage of Hamond, and that he granted the reversion to S[cot], and that then Katherine demitted herself [from the tenancy] and afterwards took [the tenements] for the term of her life by the lease of Hamond and that she then attorned herself to S[cot]? So it seems that the averment lies that she did not hold in dower.

Scrope. She held these tenements by the lease of Hamond for term [of life], and not, as you suppose, in dower. Ready etc.

Issue joined.

{Bereford, C.J.[2] It may be that originally she held by way of dower, and that she rendered the tenements to the heir and retook an estate for term of life by this deed, and that so the nature of her original tenancy was changed. So I ask you, will you accept the averment that she holds in dower according to the purport of the writing that you [for the avowant] put forward,[3] and not for term of life according to the deed produced [for the plaintiff]; for both one and the other are matter of evidence.

Passeley. She holds in dower etc.

The others said 'for term of life,' and issue was joined.}

{*Scrope.*[4] By form of law there is a difference between an avowry upon a tenant in dower and one upon a tenant for life. Now I put case that Hamond granted the reversion of these tenements as of tenements held in dower to John, the present avowant, and John sued the *quid iuris clamat* against Katherine, and she came into court and declared, contrary to the terms of the conusance, that she held for life, and said that under the conusance she ought not to attorn; the Court would not award an attornment. Therefore upon Katherine as upon a tenant in dower he cannot avow.

Passeley. You see how in our avowry we say that Ralph, from whom we took our estate, was seised, and that she attorned to John [the avowant] as tenant in dower, and that afterwards we were seised

[1] Or 'was made by him of whom you held by way of dower.' It seems here supposed that the reversion was transferred by conusance, *i.e.* by fine. That we have not yet heard, and the record speaks only of a grant by deed.

[2] In Version 2 the case ends thus, the previous discussion having been similar to that given above.

[3] What this writing is we have not been told, and the record throws no light on this point.

[4] We now give the debate from Version 3.

dower se attorna, et nous pus seisi de ces services, a quele seisine ne a quele attornement ele ne respount nient. Jugement etc.

Scrop. Coment qe vous parlez d'attornement K. et de la seisine come tenant en dowere, de l'oure qe nous mettoms avant le fet Hamond, qe prove qe nous tenoms a terme de vie, et ov ceo nous le voloms averer, par qei n'entendoms pas qe son attornement ne sa seisine change l'estat K. ne sa tenance. Par qey a ceo n'avoms mestier a respondre. Jugement.

Denum ad idem. Jeo pose qe Jon portast son bref de wast vers K. com tenant en dowere, et nous deisoms qe la ou son bref suppose qe nous tenoms en dowere [1] nous tenoms a terme de vie et meisom avaunt le fet H., il ne prendreit rien par son bref. Auxi par de sa. Jugement. Estre ceo, nous sumes en un qe les tenemenz furent en ascun temps en la seisine H., et nous avoms mys avaunt le fet H. qe prove nostre estat a terme de vie. Par qey impossible serreit qe nul fet par my ly trovereit [2] nostre estat en dower.

West. La ley ne mey chace poynt a pleder a ceo a qey nous ne poum estre partie a ceo fet trier, ne a l'estat H. ne poum estre partye, mès a la seisine R., et a ceo qe jeo plede vous poet estre partie. Par qey plus tost la court vous chacera a pleder al attornement et a la seisine, a qy vous poet estre partie, qe moi a pleder au fet H., a qey nous ne poum estre partie a granter ou dedire. Et demandoms jugement. D'autrepart, ou il covent q'il plede a nous com privé ou com estrange; s'il plede cum privie, dount covent il respondre a la seisine, s'il plede comme estrange, donqe ne purra il estre partie.

Pass. K. tint ceux tenemenz par l'assignment de Hamond en dower et non pas a terme de vie. Prist etc.

Et alii econtra.}

{*Scrop.*[3] Attornement ne put changer la tenance.—*Ber.* Les fès sunt fors evidens.—*Pass.* Ele tent en dower. Prest etc.—Alii econtra.}

Note from the Record.

De Banco Roll, Hilary, 3 Edw. II. (No. 180), r. 79, Midd.

John de Haliburne was attached by a judicial writ (*breve de iudicio*) to answer Katherine, wife that was of Richard de Boxendone, in a replevin action for taking a horse. Katherine, by her attorney, complains that on [3 Jan. 1308] Wednesday next before the Epiphany in 1 Edw. II., John took a horse of hers at Harewe,[4] in the place called Bercroft: damages, forty shillings. (*Note continued on the opposite page.*)

[1] *Ins.* et *R.* [2] tornereit (?). [3] This ending of the case from *X.* [4] Mod. Harrow.

of her services. To this attornment and this seisin no answer is made. Judgment etc.

Scrope. Whatever you may say about the attornment of Katherine as tenant in dower and of the seisin, [we pray judgment] since we produce the deed of Hamond which shows that we hold as tenant for life, and in addition we are willing to aver this; and we do not think that any attornment by Katherine or any seisin by [the avowant] can change her estate or tenancy. So to that matter we need not answer. Judgment.

Denom to the same effect. I put case that John brought his writ of waste against Katherine as against tenant in dower, and we said that, whereas his writ supposed her to be tenant in dower, she held for life, and we produced the deed of Hamond; then he would take nothing by his writ. So in this case. We pray judgment. Besides, we are at one that the tenements were once in the seisin of Hamond, and we have put forward a deed of his which proves our estate to be for term of life. Therefore it would be impossible that any act of his should turn our estate into dower.

Westcote. The law does not drive me to plead to [a matter], to the trial whereof I could be no party; and I could not be party to try the estate of Hamond; but you might be party to try the seisin of Ralph and what I have pleaded. Therefore the Court would more readily drive you to plead to the attornment and the seisin, to a trial whereof you can be party, than drive me to plead about the deed of Hamond, which deed I could neither confess nor deny. So we demand judgment. Besides, it behoves him to plead with us either as a privy or as a stranger. If he pleads as a privy, he must answer to the seisin. If he pleads as a stranger, he can be no party.

Passeley. Katherine held these tenements by the assignment of Hamond in dower and not for term of life. Ready etc.

Issue joined.}

{*Scrope.*[1] Attornment cannot change the nature of the tenancy.—*Bereford, C.J.* The deeds are only evidence.—*Passeley.* She holds in dower. Ready etc.—Issue joined.}

Note from the Record (*continued*).

John, by his attorney, after formal defence, avows the taking; for he says that Katherine holds of him in dower thirty acres of land and the third part of a messuage in the vill of Harewe by fealty and the service of five shillings a year; and that John was seised of these services by her hands;

[1] An abbreviated report ends thus.

Note from the Record (*continued*).

and that, because sixteen pence of the said rent were arrear to him on the day of the taking, he took the horse in the said place, which is part of the said tenements.

And Katherine demands that John show how she holds in dower and by whose assignment.

And John says that after the death of the said Richard, sometime her husband, one Hamo, Richard's son and heir, assigned to Katherine the said tenements to hold by way of (*nomine*) dower; and that Hamo granted to one David Scot the reversion of the tenements; and that by reason of this grant Katherine attorned herself to David; and that afterwards David granted the reversion of the tenements to one Ralph, son of [John, son of [1]] Peter; and that Katherine attorned herself to Ralph as tenant in dower; and that then Ralph granted the reversion of the tenements to the avowant; and that Katherine attorned herself to him as for her dower; and that he was seised of the said fealty and services by her hands, as aforesaid; and that for this reason he avows the taking upon her for the said sixteen pence.

And the plaintiff says that the avowant cannot avow the taking upon her as tenant in dower in the form aforesaid; for she says that the said Hamo from his seisin demised to her the tenements, to hold for her whole life in exchange for other tenements previously assigned by him to her in

13. MULEBURNE *v.* LE MOYGNE.[2]

Replegiari, ou il avowa pur releef par resoun de comune fee, ou il dit q'il tient de luy par peti fee, et chacé a respoundre a la seisine de services par resoun de comune fee.

A. de C. porta le replegiari vers B. etc.

Will. avowa par la resoun qe mesme celuy A. tient de luy certeinz tenements par homage, feaulté, et par escuage scil. xl. s. qaunt l'escu [3] etc.,[4] des queux services le piere B. fust seisi par my la mayn le piere [5] A., et pur c. s. de releef après la mort le piere mesme cesti A. si avowe il sur A. com sur soun etc.

West. Vous avowez sur nous purceo qe nous tenoms de vous un fee de chyvaler [6] par escuage de xl. s.[7] etc. Sire nous vous dioms qe nous tenoms mesme les tenemenz par le petit fee de Mortein sc. xxx. s.[8] a l'escu qaunt l'escu court a xl. s. et qaunt etc.[9] Jugement, desicome la cause de vostre avowrie est la tenaunce, et vous avet avowé pur

[1] Interlined. [2] Text from *A*: compared with *D*, *Q*. [3] *Ins.* court *D*, *Q*. [4] *Ins.* et a plus etc. *D*, *Q*. [5] meyn W. ael A. com par my etc. dil homage par my la meyn P. pere *Q*. [6] *Ins.* et demy *D*, *Q*. [7] *Ins.* qaunt lescu court a xl. s. *Q*. [8] xl. *D*. [9] *Om.* Sire . . . . etc. *Q*.

Note from the Record (*continued*).

dower. And she produces a certain writing under the name of Hamo, which witnesses that he granted and demised to the said Katherine, his mother, the said tenements in exchange for all parcels of land, wood, meadow, and pasture which she had by way of (*nomine*) dower in Stoudon, Berdon, Hegdeffeld, Pyrycroft, Stokynge, Eld Orchard, and Newemede, so that neither Hamo nor his heirs or assigns should be able to claim or demand (*vendicare*) anything in the said tenements so long as she should live. Wherefore she says that she holds the tenements by the demise of Hamo discharged (*exonerata*) of the said services, as appears by the tenor of the writing; and she prays judgment whether the avowant, by reason of any assignment by Hamo or by any other person, ought to be admitted to this manner of avowry (*ad huiusmodi formam advocandi*) upon her as tenant in dower.

And the avowant says that, no matter what writing the plaintiff produces, she on the day of the taking held the tenements, from which in his avowry he exacts the said services, in dower of the avowant, and not for the term of her life by the demise of Hamo, as she says; and of this he puts himself upon the country.

Issue is joined, and a *venire facias* is awarded for the morrow of St. John Baptist.

13. MULEBURNE *v.* LE MOYGNE.[1]

The petty fees of Mortain which owe less scutage also owe less relief than ordinary fees. *Semble* that seisin by the lord of the full rate of scutage would enable him to avow for the full relief, notwithstanding that the fee is a petty fee.

A. of C. brought replevin against B.

Willoughby avowed for the reason that this same A. held of him certain tenements by homage, fealty and escuage: to wit, forty shillings a year when escuage [runs at forty shillings on the fee]; of which services B.'s father was seised by the hand of A.'s father[2]; and for a relief of a hundred shillings on the death of A.'s father he avows upon A. as upon his [very tenant].

Westcote. You avow upon us as holding of you a knight's fee by escuage of forty shillings. Sir, we tell you that we hold these tenements as a little fee of Mortain[3] paying thirty shillings to escuage when escuage is at forty shillings [on ordinary fees], and so in proportion. And, since the cause of your avowry is the tenancy, and you

[1] Proper names from the record.

[2] Or 'by the hand of A.'s grandfather, and of homage by the hand of his father.'

[3] As to these little fees, see Madox, Exchequer, i. 649.

comune fee la ou nous tenoms del petit fee, si sur nous pur releef due par resoun de comune fee poetz avower.

Pass. Nous sumes donqes a un de la seisine, et c'est un bref de possessioun, et avoms lié la seisine q'est[1] cause de nostre avowrie par my la mayn vostre piere.[2] Jugement, si pur les accessories qe sount apurtenaunz a mesme les services ne devoms avower.

Friss. La seisine des services n'est pas cause de vostre avowereye, eynz est la tenaunce, pur[3] resoun de quele tenaunce com de[4] comune fee ne poetz sur nous avower, purceo qe les tenemenz qe nous tenoms sount del petit fee etc.

Wilgh. Nous avoms dit deux choces, de la seisine, et de la tenaunce ; et c'est un bref de possessioun, ou vous ne devetz traverser la tenaunce saunt respoundre a la seisine q'est en la possessioun.

Berr. Pur[5] la seisine del homage soullement[6] poet homme avower pur releef, tot soit[7] il seisi[8] del escuage en soun temps, qe par aventure en[9] soun temps n'y avoit il poynt escuage. Donqe semble il qe la seisine del escuage come en noun del fee comune etc.

West. Seisi[10] fors en noun del petit fee de Mortin[11] auxi come nous avoms dit. Prest etc.

Et alii econtra.

Note from the Record.

De Banco Roll, Hilary, 3 Edw. II. (No. 180), r. 78d, Dors.

Henry le Moygne was summoned to answer John de Muleburne, why, together with John de Eyston and Nicholas Collard, he took his beasts and detained them against gage and pledge. The count says that the taking was made on [3 Jan. 1308] Wednesday next before the Epiphany in 1 Edw. II., in the vill of Muleburne,[12] in a place called Echfeld ; five horses (*affros*) were taken : damages, ten pounds.

Henry, after formal defence, answers for himself and the others, and avows the taking; for he says that John holds of him the manor of Muleburne by homage and fealty and the service of one knight's fee and a half, to wit, sixty shillings to the King's scutage of forty shillings when it occurs and so in proportion ; and that of these services William, Henry's father, whose heir he is, was seised by the hands of one Henry, grandfather of John of Muleburne, whose heir [John] is, as by the hands of his very tenant ; and that, because a hundred and ten shillings of the relief on the death of John, father of John of Muleburne, whose heir he is, were arrear on the day of the taking, he [the avowant] took the beasts in the said place within his fee, as well he might. (*Note continued on the opposite page.*)

[1] seisine des services qe sount *Q*, *D*. [2] ael *Q*. [3] par *D*, *Q*. [4] tenaunce pur *D*, *Q*. [5] Par *Q*. [6] *Ins.* ne *D*, *Q*. [7] *Om.* soit *A*. [8] releef arere et *Q* ne fust il poynt seisi *Q* ; *sim. D*. [9] *Ins.* tout *D*. [10] noun de fee comun seisi si *without a change of speaker*) ; *sim. D*. [11] Morteyne *Q*. [12] Mod. Milborne.

have avowed as for an ordinary fee, whereas we hold only one of the small fees, we demand judgment whether you can avow upon us for such a relief as is due for an ordinary fee.

Passeley. We are agreed then as to the seisin; and this is a possessory writ; and we have laid the seisin of the services, which is the cause of our avowry, by the hand of your father.[1] Judgment, whether we cannot avow for the accessories appurtenant to those services.

Friskeney. The cause of your avowry is, not the seisin of the services, but the tenancy; and by reason of this tenancy you cannot avow upon us as for an ordinary fee, since the tenements that we hold are one of the petty fees, etc.

Willoughby. We have said two things: we have spoken both of the tenancy and of the seisin; and this is a possessory writ where you cannot traverse [our statement of] the tenancy without answering to the seisin, for that is the possessory matter.

Bereford, C.J. One can[not][2] avow for a relief with a seisin merely of homage, even though it happen that the avowant has not[3] been seised of escuage in his time, for it may happen that there was no escuage in his time. Thus it seems that seisin of escuage as from an ordinary fee [is a matter that must be traversed].

Westcote. Seised only as from a petty fee of Mortain as we have said. Ready etc.

Issue joined.

Note from the Record (*continued*).

The plaintiff says that the avowant cannot avow the taking upon him for the said relief in manner aforesaid; for he says that he holds the manor of the avowant by homage and fealty and the service of one knight's fee of the petty fee of Mortain (*de parvo feodo de Morteyn*), to wit, by doing (*faciendo*) to the King's scutage of forty shillings when it occurs, twenty-six shillings and eightpence[4] only for all services; and as to the avowant's assertion that William his father was seised of the said scutage of sixty shillings for one knight's fee and a half, the said William was never seised of the said scutage as the avowant says; and he [the plaintiff] prays that this be inquired by the country.

Issue is joined, and a *venire facias* is awarded for the morrow of St. John Baptist.

[1] Or 'grandfather.'

[2] Another reading is 'One can avow.' We have to choose between two versions of the Chief Justice's speech.

[3] This 'not' is not sanctioned by all books.

[4] Two-thirds of the normal sum.

14A. ZOUCHE *v.* COBHAM.[1]

Entré, ou piert qe si jeo mette avaunt fait en bare d'actioun et le tenaunt die q'il est deinz age, l'issu soy prendra sour la confectioun et nent sour temps de la date.

Dowere, ou relès fut mis avant: ou le demaundaunt dit qe al temps de la confexioun de fet ele fust deinz age, et le tenaunt dit qe al temps de date ele fust d'age.

Un femme demaunda tenemenz vers un tenaunt.

Pass. Ele ad relessé et quitclamé etc. (Et fust la date de la quiteclamaunce l'an xiij.)

Herle. Ele fust dedenz age jour de la confectioun de ceo fait. Prest etc.

Pass. De plein age l'an xiij. Prest etc. Et vous avet conu le fait, et *per consequens* qaunt qe est contenu dedenz le fait.

Herle. Jeo ne plede mye a la date du fait, einz al temps de la confectioun de fait; qe poet estre qe ceo fust fait qaunt ele fust dedenz age, et qe la date fust mys de[2] x. aunz ou xij. après, en quel temps ele fust de plein age. Par qei jeo ne plede[3] mye fors au temps de la confectioun.[4]

Pass. Vous ne poetz dire qe a ceo temps ele fust dedenz age,[5] qar ele mesme fust partie a cele fyn, scil. aunz avaunt, scil. l'an x.,[6] ou cele fust en court examiné et accepté come femme de pleyn age.

Herle. Jeo n'ay qe fair a pleder a la fyn ou la date du fait, mès tauntsoulment d'averer qe au temps de la confectioun de ceo fait ele fust dedenz age.

Pass. De pleyn age jour de la confectioun. Prest etc.[7]

Et purceo qe le fait fust fait a[8] Loundres et ele nasquist en aultre counté, il furent en awer ou de prendre pays ou de Loundres ou dount ele fust nee, ou de l'un ou[9] de l'autre. (Et fust agardé l'enqueste de L. ou le fait fust fait.)

{*Pass.*[10] Q'ele fust de pleyn age auxi com la fyne suppose etc. ut supra.

Et pur ceo qe autrefoize furent a issue sur certeyne poynt, fust agardé q'il se tensist a soun primer issue. Et fust le pais agardé de Loundres pur ceo qe le fait fust fait en Loundres.}

[1] Text of this first version from *A*: compared with *D*, *Q*. Headnotes from *A* and *B*. [2] *Om.* de *D*, *Q*. [3] pledera *D*, *Q*. [4] *Ins.* en quel temps deynz age, prest etc. *D*, *Q*. [5] *Ins.* lan. xiij. *D*. [6] fyn qe cy est iij. aunz avant lan xiij. *Q*. [7] *Ins.* et alii econtra *Q*. [8] en *Q*. [9] et *D*. [10] *Substitute this for the last sentence D*, *Q*. Et autrefoiz Pass. *D*.

14A. ZOUCHE v. COBHAM.[1]

A woman confronted by her deed of release tenders to aver that she was under age when the deed was made, and the other party is driven to traverse this averment instead of averring (1) that the relessor was of full age at the date inserted in the deed, and (2) that previously she had been received in court to acknowledge a fine.

A woman demanded tenements against a tenant.

Passeley. She has released and quitclaimed. (The date of the quitclaim was 13 Edw. I.)

Herle. She was under age on the day of the making of the deed. Ready etc.

Passeley. Of full age in the year 13. Ready etc. And you have confessed the deed and consequently all that is contained in the deed.

Herle. I am not pleading to the date mentioned in the deed, but to the day on which it was made. Maybe the deed was made when she was under age, and the date was put in ten or twelve years afterwards when she was of full age. Therefore I plead only as to the time of the making.

Passeley. You cannot say that at that time she was under age, for she was party to a fine some years before, namely in 10 Edw. I., and then she was in court and was examined and accepted as a woman of full age.

Herle. I am not called upon to plead to the fine, or to the date inserted in the deed. I have only to aver that at the time when the deed was made she was under age.

Passeley. Of full age on the day of its making. Ready etc.

And since the deed was made in London, and she was born in another county, they were in doubt as to whether to take a jury from London or from the place where she was born, or from both places. It was adjudged to take a jury of London, where the deed was made.

{*Passeley.*[2] She was of full age as the fine supposes (repeating what had been said before).

And because they had previously come to issue about a certain point, it was awarded that he must hold to his former issue. And a jury from London was awarded, for the deed was there made.}

[1] This case is Fitz., *Feffementes et Faits*, 95. Proper names from the record. The record throws doubt upon the statement in our headnote.

[2] Some only of our books report this unsuccessful endeavour to retreat.

14B. ZOUCHE *v.* COBHAM.[1]

Oliver de Southe[2] et Johane sa femme porterent un bref vers H. de Cobham etc.[3]

West. Actioun ne poez avoir, qe Johane qe ore se pleint etc.[4] relessa et quiteclama a J. de Cobham nostre pere etc.[5] tut soun droit etc. Jugement, si encountre etc. pusez ren demaunder.

Herle. Nous grauntoms ben le fet etc., mès[6] nous dioms qe nous fumes deinz age etc.,[7] prest etc.

West. A ceo ne devez avenir, qar nounage[8] en tens de la confectioun amounte en taunt qe le fet qe nous botoms encountre vous ne vous deit grever, pur ceo qe vous fuitez deinz age en temps etc. Et par taunt avez graunté qaunt qe est compris en le fet, en quel fet il y ad certeine date. Et vous dioms qe un demi an avaunt la date noté en le fet, le quel fet vous avez conu, si leva une fyn entre vous et Johan de Cobham[9] en cette court de certeynz tenemenz en la fyn compris. Et demaundoms jugement, desicum vous futes accepté de pleyn age en la court le Roi avaunt la date qe vous avez conu, si ore a dire qe vous fuites deinz age devez estre r[ece]u.

Herle. Volez vous dire pur ceo qe jeo dy[10] qe jeo fui deinz age en tens la confectioun del escrit, qe par taunt ay graunté la date ? Nanil, qe vous poez en moun nounage mettre date a vostre volunté.[11] Et d'autrepart, si jeo vous face un escrit deinz age, et vous mettez leynz date de v. aunz ou de vj. qe sount a venir, ensiwyt il[12] qe si jeo die qe jeo estoi deinz age, que[13] le escrit fut fet en tel tens cum la date purporte (*quasi diceret non*) ?

West. Vous dussez dire issint qe, quele date qe l'escrit veut, nous fuymes deinz age. Mès vous deites qe vous futez deinz age etc. simplement saunz protestacioun fere etc. ; et par taunt avez conu la date et qaunt q'il y ad en le escrit contenu. Et desicum nous avoms asserté la court qe vous fuitez de pleyn age par le lever de la fyn avaunt le tens de qe vous avez conu,[14] demaundoms jugement.[15]

[1] *Vulg.* p. 68. Text of this second version from *P* : compared with *B*, *L*, *M*, *S*, *T*. [2] de la Souche, *S*, *T*. [3] Une femme porta bref de douwere vers H. de C. *B* ; vers Will. de Cobham *L*. [4] Jone en sa pleyne vevete *S*, *T*. [5] qar vous nous avetz relesse et quiteclame *B*, *L*. [6] Begin speech here, *B*, *L*. [7] al temps de la confectioun *B* ; *sim.* *L* ; al cel tens *S*, *T*. [8] *Ins.* allege *B*, *S*, *T*. [9] H. de C. *B* ; W. de Cobham, *L*. [10] ay dit *B*, *L*, *S*, *T*. [11] End of speech, *B*, *D*. [12] *Ins.* pur ceo *S*, *T*. [13] ensuyt il pur ceo qe *L*. [14] temps de la date conu *L*. [15] West. Vous duissetz avoir dit qe jour de la date qe lescript veot fuistes deinz age et ne mie avoir counte symplement *B* (*end of case*).

14B. ZOUCHE *v.* COBHAM.[1]

Oliver de la Zouche and Joan his wife brought a writ against H. of Cobham etc.

Westcote. Action you cannot have, for Joan the plaintiff released and quitclaimed to J. of Cobham, our father etc., all her right etc. Judgment, whether you can demand anything against [this deed].

Herle. We confess the deed, but we say that we were under age. Ready etc.

Westcote. To that you cannot get, for an allegation of nonage at the time of the making [of the deed] amounts to the assertion that this deed ought not to burden you, for that you were within age at the time etc. And thereby you have conceded whatever is comprised in the deed, and in the deed is a certain date.[2] And we tell you that half a year before the date written in the deed (which deed you have confessed) a fine was levied in this Court between you and John of Cobham concerning certain tenements therein comprised. And we pray judgment, whether you can now be received to say that you were within age, since before that date which you have confessed you were accepted as of full age by the King's Court.

Herle. Is your meaning that when I said that I was within age at the time of the making of the writing, I thereby conceded the date [therein written]? Not so, for during my nonage you could insert any date you pleased. And if I make a writing while I am within age, and you insert a date of some five or six years later, is it to follow that because I say that I was within age [when the deed was made], therefore the deed was made as the date purports? Certainly not.

Westcote. Then you ought to have said 'No matter the date in the writing, we were under age.' Instead of that you said simply and without protestation that you were under age, and so you conceded the date and all [else] that the deed contains. We pray judgment, since we have certified the Court that you were of full age by means of a fine levied before the date that you have conceded.

[1] This, though in some respects fuller than the preceding report, does not carry the debate to issue.

[2] The word *date* had not yet come to mean merely 'point of time.' It directly denoted a clause in a written instrument.

Pass. Si la court entende pas [1] qe nous avoms [2] assez dit a eux ouster de l'averement avauntdit, nous dirroms outre, et volums averer qe le fet se fit en tiel tens cum la date en le fet purport. Prest etc.

Ingham.[3] Vous n'avez mester de averer ceo qe la partie [4] ad graunté. (Et fut sa oppinion [5] qe tut fut graunté qaunt qe fut en le fet, date et autre chose.)

Hervy. Agardez vos jours.[6]

14c. ZOUCHE *v.* COBHAM.[7]

Johane ke fu feme W. de Columbrez porta sun bref de dowere vers Henri de Cobbham, et demanda la terce partie del manoir de C. et la terce partie del manoir de D.

Henri. Quant a la terce partie del manoir de C., ele vient en ceste court et nous relessa e quiteclama par fin levé en ceste court, dount veez icy la partie, qe tesmoigne qe ele avoit relessé et quiteclamé, auxi com il dist, l'an xiij. pere nostre seignur le roi qe ore est.

Herle. Qei r[esponez] al autre terce-partie ?

Wescote. Ele nous ad en sa lige veveté relessé et quiteclamé par cest escrist fet a Loundres, qe tesmoigne, et fust de mesme la date qe la fin fust.

Herle. Sire, la ou il mettent avant cest escrit pur nous barrer de dowere, Sire, nous fumes dedenz age le jour de la confeccion : prest del averer.

Wescote. A ceo n'avendrez vous mie, qar vous avez granté touz les pointz contenuz en l'escrit. Mès la date de ceste escrit et la date de la fin, qe est de record, sunt de un mesme temps ; et la court le roi ne rescevereit mie femme dedeinz age estre partie au fin. Et demandoms jugement.

Herle. De rien semblable, car la fin si est de record ; et la ou vous chargez la date, possible est qe le clerk chaungea un temps pur un autre, et ceo ne proye mie qe ele fust de plein age ou dedeinz age.

Et pur ceo qe l'escrit fu fet a Loundres et ele nasquit en Kente, fut agardé qe l'enqueste fust de Loundres et de Kente etc.

[1] *Om.* pas *S, T.* [2] ne eyoms *S, T.* [3] Ing. *L, S, T.* [4] *Ins.* vous *L, S, T.* [5] graunte en supposant *L.* [6] *Ins.* a treys simaynes de Pasche in eodem statu *L, M, S, T.* [7] This third version from *Y* (f. 139).

Passeley. If the Court is of opinion that we have not said enough to oust them from their said averment, we will say something more and will aver that the deed was made at the time that its date purports.

Ingham. You have no need to aver that which the [other] party has granted. (And his opinion was that all had been granted: date and whatever else was in the deed.)

STANTON, J. Keep your day, three weeks after Easter.[1]

14c. ZOUCHE *v.* COBHAM.[2]

Joan, sometime wife of [M.] de Columbers, brought her writ of dower against Henry of Cobham and demanded the third part of the manor of C. and the third part of the manor of D.

Henry. As to the third part of the manor of C., she came into this court and released and quitclaimed to us in this court. See here a 'part' [of the fine] which witnesses that she had released and quitclaimed as aforesaid; and [it is dated] in the thirteenth year of the present King's father.

Herle. What do you say about the other third part?

Westcote. In her liege widowhood she has released and quitclaimed by a writing made in London. (And it bore the same date as the fine.[3])

Herle. Whereas they put forward this writing to bar us from our dower, Sir, we were under age on the day of its making: ready to aver.

Westcote. To that you shall not get, for you have granted all the points contained in the writing. But the writing bears the same date as the fine, and the King's Court would not receive as party to a fine a woman under age. We demand judgment.

Herle. Not a similar case, for a fine is matter of record; and whereas you insist on the date in the writing, it is possible that the clerk changed one time into another, so there is no proof that she was or was not of full age.

And because the writing was made at London and [the demandant] was born in Kent, it was awarded that the inquest come from London and from Kent.[4]

[1] The first of our two reports apparently tells what happened after this adjournment.

[2] This third report is given by but one of our books.

[3] This may or may not be part of Westcote's statement.

[4] There is here a contradiction between this and our first report.

Note from the Record.

De Banco Roll, Hilary, 3 Edw. II. (No. 180), r. 75d, Wilt.

Oliver de la Zusche and Joan his wife, by their attorney, demand against Henry de Cobbeham the third part of the manors of Chissebury, Hentone, Benknolle and Pippardesclive[1] as the dower of Joan by the endowment of Michael de Columbers, sometime her husband.

Henry, by his attorney, says that Oliver and Joan can claim nothing in the tenements by way of dower; for he says that Joan in her legitimate viduity released and quitclaimed to one John of Cobeham, father of Henry, whose heir Henry is, and his heirs all action that she had or could have by way of dower in all the lands and tenements that belonged to Michael, sometime her husband, in the counties of Wilts and Dorset. And he produces a writing under Joan's name which witnesses this, the date (*data*) whereof is London on [5 Jan. 1285] the day of St. Edward, King and Confessor, in the thirteenth year of King Edward, father of the present King. And he demands judgment.

Oliver and Joan confess the writing and all that is therein contained etc., but say that by that writing they ought not to be prejudiced; for they say that Joan at the time of the making of the writing was within age; and this they are ready to aver, and they demand judgment.

Henry says that Oliver and Joan ought not to be admitted to an averment by the country in this case; for he says that heretofore in the court of King Edward, the King's father, before Thomas de Weylonde and his fellows, justices here, on [25 June, 1284] the morrow of St. John Baptist in the thirteenth year of his reign, a fine [was] levied between John de Cobeham, Henry's father, plaintiff, and Joan, deforciant, of two parts of the manor of Tederlighe, whereof a plea of covenant was summoned etc.; and that by this fine Joan recognised the said two parts of the said manor to be the right of John de Cobeham; and, since Joan in that court was admitted to levy that fine, as though she were of full age (as will appear to the Court by the record of the foot of the fine), and that fine is of older date than the date contained in the said writing, whereby it may appear to the Court that at the time of the making of the said writing, which is of younger date, Joan was of full age, he [Henry] demands judgment, especially (*maxime*) since Oliver and Joan have above confessed the said writing and whatever is therein contained etc.

A day is given them to hear their judgment three weeks from Easter in the same condition as now.

It is possible that our three reports refer to an action different from that which is here recorded, though between the same parties and based on very similar facts. The record shows a demurrer on a point of law. Two of the reports show an issue of fact and some discussion as to the venue from which the jury is to come. Possibly, however, the tenant, after the reported discussion, was allowed to fall back upon the point of law that he had previously raised.

[1] Mod. Cliffe Pypard, near to which is Bincknoll.

APPENDIX I.

ADDITIONAL REPORTS.

Scattered among the cases ascribed to 2 Edward II. we find in one of our manuscripts (*P*) twenty-two entries for which we can cite no other authority. Some of them must be of earlier date, as appears from the names of judges and counsel, and at least one is of later date. The authority upon which they rest is so slight that a translation of them in an Appendix seems to be all that they at present deserve, though the legal interest of some of the points discussed is considerable. The copyist was guilty of some bad mistakes, and we cannot in all cases correct them.

1. Dower. Civil death of husband. Religious profession.[1]

A woman brought a writ of dower against J. and demanded the third part of a virgate of land.—*Toud*[*eby*]. She ought not to have dower, for her husband entered religion and was professed and ordained chaplain. And we pray judgment whether she ought to have dower.—*Ass*[*heley*]. Her husband is dead as regards the world, and his son can recover the father's tenements by the mortdancestor as on the death of his father. Therefore an action to demand dower of the same tenements has accrued to the wife. We pray judgment.—*Pass*[*eley*]. The marriage between them was never undone by divorce, and her husband is alive, and an action is given to the wife to deraign her husband out of this Order. We pray judgment.—*Ass*[*heley*]. We have it as common law that where the son shall recover his father's heritage, the wife shall recover dower: judgment.—*Hyngham.*[2] Her husband may be dead in two manners: naturally or to the world. If naturally, then an action has accrued to her to demand her dower. If to the world, she is barred from demanding dower, and still the son shall recover by the mortdancestor, for he cannot deraign his father out of the Order. And since her husband is alive, and no divorce has ever been made, so that the wife could deraign her husband and demand him if she pleased, this Court awards that John go quit and that the woman take nothing by her writ.[3]

[1] The catchwords are the editor's.

[2] Probably Hengham, C.J.

[3] Fitzherbert, *Dower*, 176, notes a similar decision in M. 32 Edw. I.

2.[1] **Detinue. Gift of chattels on marriage. Divorce for precontract. Ecclesiastical jurisdiction. Wager of law. Negative pregnant.**

Sheweth to you Agnes, daughter of Richard Croke, who is here, that Elys of C., who is there, wrongfully detains and does not render to her chattels to the amount of forty pounds, which one Richard Croke gave to the said Elys along with his daughter Alice [the plaintiff] in frank marriage; and wrongfully, for the said Elys received the said chattels, namely, gold, silver, oxen, cows, and sheep to the amount of forty pounds, from Richard, father of the said Alice, on such a day at such a place; and afterwards the said Elys procured one Isabel to demand him in the Court Christian as her husband by precontract, so that by his procurement the divorce between them was made on such a day, and Isabel deraigned him as her husband in the Court Christian before the ordinary; and this Alice has often come to the same Elys and prayed him to render the chattels; but he would not, but detains them to her damage, etc.—*Hunt*[*ingdon*]. What have you for the debt?—*Metyngham.*[2] We have no other title save the espousals which were solemnly made.—*Toudeby.* This touches matrimony, so it cannot be tried in this court.—*Met*[*ingham*]. The marriage is undone at the suit of the said Isabel; so the debt is not one which touches matrimony ('n'est pas de matrimonie'), although it was so once. Besides, land is higher than chattels; but if a divorce be made between man and wife, she shall have an action for the higher [the land],[3] and therefore for the lower.—*Hunt*[*ingdon*]. By their own confession Richard gave the chattels in marriage, and afterwards a divorce was made. Therefore Richard or his executors should have the action sooner than his daughter Alice. Judgment.—*Ber*[*eford*].[4] By her father's gift the property in the chattels was transferred into the person of Alice. How, then, could he have an action for the chattels which he had given to another?—*Herle.* According to them, the chattels were given to Elys and Agnes; so, if she had any action to demand them, it could only be for a moiety.—*Ber*[*eford*]. Render the one moiety then, and demur in judgment about the other.—*Hunt*[*ingdon*]. We tell you that by this writ she can only have an action to demand a moiety.—*Ber*[*eford*]. The chattels were given to Elys and Agnes; but Agnes is the cause of the gift; and by the procurement of Elys and the suit of Isabel the divorce was made. So she [Agnes] has an action to demand the whole as it was given to her.—*Hunt*[*ingdon*]. That never did we receive from Richard, her father, chattels to the amount of forty pounds, ready are we to do by our law against her and against her suit, etc.—

[1] Fitzherbert, *Detinew*, 61, gives a note of this case as from M. 34 Edw. I. We have failed to find it among Mr. Horwood's cases from that term.

[2] The appearance as counsel of the well-known John de Metingham would hardly be compatible with the other names. Fitzherbert's note, however, suggests *Mutford*: and this seems unobjectionable.

[3] By the writ of entry *causa matrimonii praelocuti.*

[4] Probably justice.

Ber[*eford*]. You must add that 'never any penny,' or confess how much you received.—*Hunt*[*ingdon*]. Our answer traverses their demand.—*Ber*[*eford*]. And since you will not say that never penny nor halfpenny [did you receive], we are ready etc.[1]—*Hyngham.*[2] To the law he shall not get, for in his answer he granted that we have an action to demand a moiety. Judgment, whether he should get to the law.—*Hunt*[*ingdon*]. I never granted that. What I said was in abatement of the writ.—*Hyngham.*[3] To the law you shall not get, for the contract was not made privily in a chamber between Agnes's father, Richard, and you, for it may be that the marriage was so made that your friends and her friends saw when you appropriated the chattels and beasts, so that the Court can be certified by the country. And since the country may have cognisance, we award that the country come.—And so to the jurors.

3. Debt. Production of suit by the plaintiff and examination of the suitors.

One A. brought a writ of debt against B. and said that wrongfully he detained from him ten marks etc.—*Howard.*[4] What have you for the debt? —*Spig*[*urnel*]. Good suit.—*Howard.* Have you anything else to bind us to the debt?—*Spig*[*urnel*]. No.—*Howard.* Sir, they demand a debt of ten marks and show to the Court nothing that binds us: nor writing, nor tally, nor anything else that avails, save only their simple word. Judgment, whether he ought to be answered.—*Spig*[*urnel*]. We have tendered suit, and to this you do not answer. Judgment against you as undefended.—*Ber*[*eford*]. Answer to their suit.—*Howard.* They have nothing but their suit. We pray that it be examined.—*Spig*[*urnel*]. There is no need for that, for suit serves for no purpose but to testify to that which the party has said and make him entitled to an answer ('respo*nible*').—*Ber*[*eford*]. In this case the defendant can choose one of three ways: to put himself upon the country; to be at his law; to put himself upon your suit that you have tendered, which is equivalent to the country ('taunt vaut cum pays'). And [here] he has assented to the examination of the suit that you have tendered. So the Court awards that you take nothing by your writ, but be in mercy, and that B. go quit etc.

4. Detinue. Wager of law.

One A. complains against one B. that wrongfully he detains and does not render to him chattels to the amount of thirty shillings, to wit, ten sheep, price so much, one cow, price etc., which he bailed to him to pasture on such a day and to keep from Michaelmas until such a day: on which

[1] This seems to come from counsel. The name *Ber.* may be wrong. If Bereford is not a justice, the case must be thrown back as far as 1293 or further.

[2] He seems to appear here as counsel, but afterwards delivers judgment.

[3] Probably Hengham, C.J.

[4] Howard and Spigurnel had both become justices before the end of Edward I.'s reign. If they are counsel and Bereford a judge, the case must belong to 1293 or thereabouts.

day he came and demanded them and could not have them etc., but etc.—*Herle* defended tort and force and said that never did he bail ten sheep and one cow as he has counted against us: ready to do against him etc. by our law etc.—*Hyngham.*[1] To your law you ought not to be received, for a man ought not to get to his law about a contract or covenant of which the country may have knowledge; but the parties should descend to the country, for your case may be known to you and to the country. So he ought not to be received to his law as the country may have knowledge.—*Herle.* Suit arraigned and confessed in court ('sute aramé et conis[2] en court') does not bring a man to any other answer than wager of law ('estre a sa lay'), unless the other party is willing. And since A. puts forward no writing which witnesses the contract, but only suit, judgment whether we ought not to be received to our law.—*Ber*[*eford*]. Now God forbid that he should get to his law about a matter of which the country may have knowledge, for then with a dozen or half-a-dozen ruffians ('ribauz') he might swear an honest man out of his goods. And if we were to award the law in this case, other folk in the country might take example by this to award the law in every case where the party has only suit. So will you say anything else?—*Herle.* No.—Therefore this Court awards that A. recover his demand and B. be in mercy.[3]

5. Debt upon specialty against sureties when the principal debtor has paid and received an acquittance but the sureties have no acquittance.

Richard, son of John, brought his writ of debt against twelve pledges and demanded of each of them the whole debt in its entirety. And he put forward a deed which witnessed that Richard had sold chattels to R. and S., and that R. and S. found for him the twelve named in the writ to stand[4] for the debt, so that each one bound himself for the whole if the principal debtors, R. and S., did not pay.—*Mydd.*[5] This writing states that we, as pledges of R. and S., are bound to [the plaintiff] in such an amount for chattels which he sold to R. and S., who are the principal debtors. And we will aver by the country that they have fully paid and have a good writing from him. And we pray judgment whether he can demand this debt over again.—*Hyngham.* First confess whether this is your deed or not.—*Midd.* as before.—*Ber*[*eford*]. Is it your deed or not?—*Mydd.* We cannot deny it. But we tell you that R. and S., the principal debtors, have fully paid the debt and have the acquittances by them: and this we will aver.—*Ber*[*eford*]. How will you aver it?—*Midd.* By the country ('par bon pays').—*Ber*[*eford*]. Why have you not, with the testimony of good folk, warned ('garny') R. and S., the principal debtors, to be here at this day to acquit you,

[1] Apparently not the Hengham who becomes chief justice, but an advocate named Ingham.

[2] The correctness of this word may be doubted.

[3] Apparently wager of law is here excluded in a simple action of detinue by bailor against bailee.

[4] The MS. has the common abbreviation for *estre*; but probably it should be *ester* [Lat. *stare*].

[5] Probably Middleton.

or at least to deliver the acquittances to you? Thereby your recovery against them of this debt would be the clearer in case you had to pay for their default.—*Midd.* They [R. and S.] received the chattels in respect of which the debt is payable; and so it belongs to them to have the acquittances by them, and not to us. So it seems to us that what we tender is sufficient for us. Besides, it is apparent that it is the 'malice' of R. [the plaintiff] that the principal debtors are not named in this writ, because they have by them his acquittance of them from this debt.—*Mett*[*ingham*].[1] Have you anything else to acquit you?—*Midd.* It seems to us that what would suffice the principal debtors who received the [purchased] chattels suffices us.—*Ber*[*eford*]. Inasmuch as every one of you has confessed that this is his deed, and you have openly confessed the debt and have nothing to acquit you, this Court awards that R., son of John, recover against you a hundred marks etc. and that you be in mercy.

6. Release in fee simple to the husband of a tenant in tail.

A woman is enfeoffed to her and to the heirs of her body engendered. She takes husband. The donor quitclaims to the husband and his heirs. *Question*: Whether right accrues to the husband by the quitclaim. *Affirmative* (videtur quod sic): The quitclaim in this case is equivalent to a charter which says 'dedi etc.' *Ergo*, the quitclaim gives him title of right.—*To the contrary*: He to whom a quitclaim is made ought to have [the] freehold. But in this case he has nothing save for the life of his wife.[2] So nothing accrued to him by the quitclaim which he had in the lifetime of his wife.—*Proof of the affirmative.* You enfeoff me for the term of my life. I lease to another ('jeo lesse avaunt') the same tenement. If he be ejected, he shall recover by the assize and therefore he has freehold, and yet he only holds for the life of another. So here. And if he has freehold, then he has an estate by the quitclaim.—*To the contrary.* If he aliens, and his wife [dies], his issue shall recover by the formedon. So it follows that the first feoffment made in fee tail stands in its force, notwithstanding the quitclaim; for in this case he to whom the quitclaim is made cannot be of better estate than the donor would be; but the donor could not claim except in default of issue. *Ergo*, no more could he to whom the quitclaim was made.—*To the contrary.* If the wife dies and the husband enters and is ejected, he shall recover by the assize, although he does not claim by the curtesy ('par la ley d'Engleterre'), for it seems that he shall recover by virtue of the quitclaim, for his estate is enlarged by the quitclaim etc.

7. Disseisin of rents service and rents charge.

Some say that an assize of novel disseisin of a rent charge can only be maintained against the tenant of the charged tenements and against the

[1] If this is the well-known Metingham the case is as old as 1299.

[2] Whether tenant *pur autre vie* has freehold had been an open question. See Pollock and Maitland, Hist. Eng. Law, ii. 81.

disseisors, so that if the tenant be not named, the writ is worthless; but an assize for rent service may well be brought against him to whom the rent is paid, if there be a disseisor [named] in the writ, without naming the terre tenant. And, according to some, the reason is this, that in case of a rent charge the tenant of the charged land may pay a rent to some other than me, it being some rent with which he has charged himself at his pleasure; but the rent service that my tenant pays to another than me, that rent is my right and my freehold by reason of my seignory. So he to whom such a rent [service] is paid can be tenant to my demand; and so the writ well lies against him, if I have a disseisor in the writ. And it is to be remembered that in the eyre of Kent [1] the mortdancestor was maintained for rent service, and it is believed that it would be the same in case of a rent charge. And as to both rents, some hold that a writ of *praecipe* will lie and ael and besael and entry and the writ of right.

8. Actions against tenant by elegit and against the execution debtor

A writ of entry was brought against a tenant by *elegit*; and it was challenged but maintained; for if the writ was brought against the other man [the execution debtor], he might render or lose by default, and so the tenant by *elegit* would lose without being a party. But if the tenant by *elegit* wished to render voluntarily or to lose by default, the other man [the debtor] would be received to defend his right. So there is no hardship if the writ be maintained against him [the execution creditor].

9. Dissolution of the Temple. Extinguishment of a mesne seignory.

One John avowed the taking good in the place mentioned in the plaint, for the reason that formerly W. held the tenements whereof that place [is parcel] of one H., Master of the Order of the Chivalry of the Temple in England, by the service of twenty shillings, of which service H. was seised, etc.; and the same H. held the tenements of the said John by the service of three shillings, of which service etc.; and the Order was dissolved ('fut defet'), by which dissolution the services devolved ('furent devoluz') into the hand of J.; and so for the services arrear for the term of Trinity he avows etc.[2]

10. Disclaimer in the case of lord, mesne and tenant.

Note that no one can disclaim except one whose disclaimer will give to the chief lord an action to demand the tenements in demesne. So the mesne cannot disclaim by himself, nor the tenant by himself; but if they join together, the disclaimer is good and receivable by the Court etc.

[1] There are full reports (not yet printed) of a Kentish eyre in 6 Edward II.

[2] This case can hardly belong to a time so early as 2 Edw. II., for the Order was not then dissolved, though the first steps that ended in its dissolution were being taken. See Lea, History of the Inquisition, iii. 298.

11. Voucher of married woman.

Note that a married woman cannot be vouched with her husband, unless she be vouched by a fine, or by the deed of an ancestor, or by her own deed made before the coverture.

12. Distress made in a moor which the plaintiff claims common. Avowry for service on a stranger.

In a plea for the taking of beasts the defendant avowed upon the Prior of Merton, who was a stranger to the plaintiff (who had counted on a taking made in his common of pasture), for the reason that he [the Prior] held [the tenements] whereof the place [where the taking was made is parcel] by homage and knight's service, and for the scutage of the year 28 [Edward I.] he [the defendant] avows etc.—*Toud*[*eby*]. The place where the distress etc. is a very large moor ('une grandesime more') of pasture, whereof the soil is held *pro indiviso*. Judgment, whether in such a place you can avow for service.—*Herle*. Then say 'Outside his fee.'—*Toud*[*eby*]. No, that cannot be, for we hold the soil in common.—*Herle*. True it is that in the place where the taking was made there is a very large moor where he [the plaintiff] has common, where the soil is ours 'et a tut cel si ball'[1] qest nostre several, ou il feit la prise pur eschiwer soun soil en le leu ou la prise fut fet. Ideo etc.'—*Marginal note*. Replevin where the avowry was made for rent service in common of pasture.

13. Writ of entry. Plea of entry under judgment. Production of record.

A woman brought a writ founded on the novel disseisin, [saying] into which Thomas has no entry except by W., to whom Isabella demised, she having wrongfully disseised this same [plaintiff].—*Willeby*. William entered by the judgment of this Court.—*Malm*. By what judgment?—*West*[*cote*]. William brought a writ of right against J., who vouched to warranty one T., who made default after default, wherefore William recovered against J., and J. to the value [against T.].—*Malm*. How will you aver that?—*West*[*cote*]. By record.—*Launf*. We are not party to that record.—*Herle*. We will aver our writ.—*West*[*cote*]. Judgment, whether you can get to any averment against this record, for our exception is in law and yours in fact.—*Hervy* [*of Stanton*]. Plead over ('dites outre').—*Herle*. We vouch a record before such and such justices in such a year etc.[2]—*Marginal note*. Entry, where the tenant said that he entered by judgment, and he was driven to say by what judgment.

[1] We cannot conjecture the true reading. Perhaps what looks like *si ball'* should be *several*.

[2] If Herle is for the demandant, as he seems to be above, we may perhaps suppose him to vouch some record other than that on which the tenant relies. But a mistake in the names is possible.

14. View in a writ of entry sine assensu conventus.

In a writ of entry which said 'into which he has no entry except by one G., sometime bailiff of J. his predecessor etc. without the consent of the convent etc.'—*Hedone.* The lease was made by a stranger, for you are not in the case of the Statute.[1]—*Hervy le Hasty.*[2] This is a *praecipe*, and the lease is enough for you. Therefore you shall not have a view.—*Launf.* We entered, not by G., but by P.: ready etc.—*Marginal note.* Entry, where the view was demanded and not granted.

15. Voucher. Variance between the demand and the specialty.

In a voucher the vouchee demanded what he [the vouchor] had to bind him to the warranty. He produced a deed etc.—*Rustone.* Judgment of the variance between the count and the specialty, for you have counted of four acres of land etc., and the deed speaks only of two acres of land.—*Launf.* The deed says two acres, 'together with the land which the said John has by purchase ('ex quesito suo'),' and, albeit the deed speaks thus generally, it behoves that we count specially and in pursuance of our writ.—*Hervy* [*of Stanton*]. If the deed speaks generally, and you are impleaded for a part ('empledé de partie'), cannot you vouch generally? (He implied the affirmative.) Therefore etc.—*Rust.* He only holds of us two acres of land, and that we are ready to warrant.—Issue joined.

16. Claim of conusance: when it should be made.[3]

A bailiff claimed the franchise of B. on the first day [of the plea]. On that day the defendant was essoined. On the second day he made default, and on that day the bailiff did not claim the franchise.—*Herle.* You shall not have it, for you discontinued your claim.—*Hervy* [*of Stanton*]. If he claims on the first day, that suffices him; and you cannot deny etc.[4] Therefore let him have the franchise etc.

17. Action for assigned dower. Plea of endowment under the common writ.

In an action for dower assigned one Lucy vouched.—*Launf* [*are*] counted against the warrantor.—The warrantor said that to this writ she ought not to be answered, for she has received her dower by the common writ in all

[1] Stat. Westm. II. c. 48 expressly excludes a view where the demise is made by the demandant or his ancestor to the tenant himself.

[2] Apparently an irreverent description of Mr. Justice Stanton.

[3] Perhaps the case of which there is a shorter note in our first volume, p. 92.

[4] You cannot deny that he did so.

the lands that belonged to her husband: judgment.—*Hedone.* He is not heir, so this answer does not lie in his mouth.—*Toud[eby].* We are tenant of the tenements.—*Ruston.* This answer would lie in the mouth of the heir, but not in yours: judgment.—*Hed[one].* By whose assignment? —*Launf[are].* By that of J., son and heir of your[1] husband.—*Ruston.* Not seised: ready etc.—*Hervy [of Stanton].* What if she were seised? She was a fool to give such an answer. ('Quei si ele fut seisi ele fut fole a doner tel respounse.')

18. Voucher. Collusion between vouchee and demandant.

In a writ of entry brought against a tenant in dower she vouched the heir by reason of the reversion. He appeared, and desired to render to the demandant.[2]—*Clav[er],* for the woman, said that she was impleaded by collusion between the vouchee and the demandant, and prayed that she might not lose her tenancy by such collusion, for he [the heir] had nothing wherewith to compensate her ('navoit rien dount faire a la value').— *Launf[are].* We pray judgment according as the plea is pleaded.— *Hampt[on].* She might have given some other answer instead of vouching. —*Hervy [of Stanton].* Was the heir seised on the day on which he was vouched?—*Clav[er]* could not deny it.—Therefore it was awarded that the demandant should recover against the woman, and the woman to the value [against the heir]. But if he was not tenant when he was vouched we would inquire ('nous feysoms enquere') as to the deceit.

19. Joinder of battle or grand assize by a termor.

Note that where a tenant for term of years by my lease joins battle or the grand assize and did not first pray aid of me, after the joinder I shall enter the tenements, for this joinder is ('chiet') to my disheritance; for, if I wait until judgment be passed against this tenant, I have lost my action for the future, unless I put in my claim within the year, etc. Whether I can enter after the judgment is executed remains to be seen ('fait a veer').[3]

20. 'Fitz' as part of a surname.

Note a *praecipe* ran 'Praecipe etc. quod reddat W. filio Thome,' whereas his [the tenant's] father had John for his name and his surname was 'fitz Thomas.' But by saying 'Willelmo filio Thome' [the demandant] supposed that [the tenant's] father had Thomas for his name. It would have been otherwise if he had said in French 'Willelmo fitz Thomas.'

[1] The MS. plainly gives *vostre.*

[2] The MS. gives *Qe vynt et ore al dd'.* We suggest *Qe vynt et voleit rendre al demandant.*

[3] This last sentence in the margin by a later hand.

21. Privy and stranger. Demand for specialty. Claim of cognisance Correction of error on the roll by the memory of the justices.

A carelessly made copy of the record of a *quare impedit* brought by William de Lucy against Edward Burnel. Apparently the plaintiff's case is that a manor and advowson descended to six sisters; that the plaintiff's grandfather purchased two of the six shares; that one Paul of Leyndon purchased the other four; that a composition was made to the effect that Paul and his heirs should present successively three times, and that the plaintiff's grandfather and his heirs should present on the fourth vacancy; that Paul presented once; that the shares that Paul acquired 'came to the hands' of one Robert Burnel, who presented on the second vacancy; that on the third vacancy the King presented as guardian of Robert's cousin and heir, Edward Burnel, the impedient; that the fourth vacancy has now occurred and Edward Burnel is impeding the plaintiff.—The impedient then craves judgment, apparently on the ground that the plaintiff, who is stranger and purchaser, produces no specialty in proof of the composition. —At this point the bailiff of the Abbey 'de Foriscampo,' now in the King's hand by reason of a vacancy, intervenes and claims cognisance of the cause and produces a royal charter granting cognisance of all manner of pleas within a certain hundred.—This demand is rejected on the ground, so it seems, that the now impedient has brought an assize of last presentation against the now plaintiff, and that Magna Carta says that such assizes are to be taken before the Justices of the Bench.[1] So a day in both pleas is given to the parties.—The remainder of the entry, rendered unintelligible by omission, relates to some dispute concerning the day that was given. Seemingly 'all the justices record' that a mistake has been made upon the roll by the negligence of a clerk.

22. Power of two out of three co-executors.

Record of an action of debt by three executors against John Marmion the elder. The count is on a deed whereby the defendant confessed himself bound to the said executors in a certain sum, the price of beasts and corn.—The defendant pleads that he has satisfied the debt, and produces a letter of acquittance under the names (apparently) of only two of the three plaintiffs.—There is no further pleading or judgment.

[1] The argument would be that the Abbot's court, being unable to entertain the assize, could not do full justice in the counter-action.

APPENDIX II.

AN ADDITIONAL RECORD.

We have not found upon the rolls any case that we can with any certainty identify with that which is reported (above, p. 138) as having arisen between Ingram Berenger and William de Saint Heler. But, considering how proper names are distorted in the reports, we may do well in noting an entry that occurs on De Banco Roll, No. 180, r. 188d. (Northumb.).

Master Richard de Morpath was attached to answer Ingelram de Caldemerton as to why he held plea in Court Christian of chattels and debts which do not concern (*que non sunt de*) testament or matrimony, against a prohibition etc. Ingelram, by his attorney, says that, whereas one Master William de Burnecestre had drawn him, Ingelram, into plea before Master Richard, exacting of him ten pounds of silver which did not concern testament or matrimony, and Ingelram, in the presence of William, son of John, and Richard, son of William, and others, on the vigil of Pentecost, in the second year of the present King's reign, at Shadefen, by the hand of (*per*) John de Aketon, had delivered to Master Richard a royal prohibition against further holding that plea in Court Christian, nevertheless the same Master Richard, at the suit of Master William, did further hold that plea in Court Christian down to a sentence of excommunication etc., against the prohibition: damages, forty shillings.

Master Richard, by his attorney, after formal defence, denies that he held that plea in Court Christian against prohibition, as Ingelram says; and this he is ready to deny (*defendere*) against him and his suit as the Court shall award.

Therefore it is awarded that he wage him a law thereof with the twelfth hand, and come here with his law on the morrow of St. John Baptist. Pledges of his law: John de Hayton, of the county of York, and Henry de Langeton, of the county of Northumberland; and his attorney is bidden to cause his principal (*dominum*) to come in proper person to make his law etc.

CONCORDANCE OF THIS EDITION WITH THE OLD EDITION.

Pages in the Old Edition.	*Pasch. An.* 2.	Pages in this Edition.
41	Un monstravit daccompte	34
41	Hugh' le fuiz Thom' .	34
	Trin. An. 2.	
42	Robert le fuiz Paen [vol. i. 172]	
42	Un A. port' son repl' vers Marmaduke . [vol. i. 176]	
43	Une home port' son breve de cosinage . [vol. i. 184]	
43	Nota qen un breve de forfeiture . . [vol. i. 188]	
44	En un breve de garde .	1
44	Alice de Beuchamp . .	5
44	Si tenant per la ley Dengleterre . . .	7
45	Nichol' de Walwene .	7
45	Adam de Peddelee . .	13
45	Deux Ex' porter' un breve	15
46	Nota q' en un Cessavit .	18
46	Nota q' les deux defendaunts	18
46	En prise des avers. Herle .	19
46	Un Aleyn graunta la manoir	19
46	Nota qen un breve denjettement	19
46	Un Dionise de la Syme .	20
46	Richard de Marton . .	21
47	Un Jon Giffard' . .	30
48	Un breve Dentre Pr'. A. de B.	33
48	Un breve sabatist qun Hugh' de Cave . .	34
48	Inter Johannem filium Rogeri [1] . . .	
48	Hec est final' concordia [1] .	
	Mich. An. 3.	
49	Un A. port' son breve de Covenaunt . . .	86
50	En un Repl' un homme .	88
50	Un J. de K. port un tiel Cui in vita . . .	90
50	Un Alisaundre se pleint .	92
51	Un A. port son breve contra formam Feoffamenti	93
51	Un Adam le fuiz Robert Haket	97
51	Johan Cap' port breve vers un tenaunt . . .	99
51	Herm fuiz H. de C. conust	100
52	Un home port son breve de Besael . . .	105
52	Un A. port son breve contra formam Feoffamenti .	95
52	Nota la ou un conissaunce	97
52	Un Abbe se pleint qun A. atort prist . . .	103
53	Nota qun breve Dentre cui in vita . . .	142
53	Johan de Lacy et Alice .	108

[1] In the Maynard MS. two fines of later date were copied on a space left blank at the end of the year. Thence they passed into the printed book.

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53	Un home port son breve dentre ad terminum .	110
54	Un A. port son breve de Wast	112
54	Un Enfaunt deinz age .	113
54	En un breve Dael bastardie	114
54	Robert de Marey's . .	116
55	Un Jordan' donna . .	119
55	Un feme purch' certeinz .	122
55	Un breve fuist porte vers Jon Fox . . .	142
55	Un home fuist emplede .	120
56	Un home conust certeinz .	143
56	Un feme port son breve de Dowere . . .	144
56	Un home vouch' agarr' .	145
56	Un feme port son breve vers R. Fox . . .	145
56	Un Agn' port son breve Dentre	136
56	En cas ou Bastard' . .	145
56	Ingram Berengier . .	138
56	Un quiteclaime fuist mys .	139
57	Nich' de Walden . .	7
57	Marger' de Neville [vol. i. p. 77]	
57	Un A. conust xl s. de rent	146
57	Un home porta son breve de Dette . . .	153
57	Un Alice conust les servic'	101
57	Johan et Alice graunterent	146
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58	Un enfaunt deinz age .	113
58	Un breve Dintrusioun .	141
58	Will' de Ros de J. senior .	135
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60	Margaret qe fuist la feme .	180
60	Nota si aliqua loquela .	181
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61	Un Will' porta son Repl' divers R	174
62	Johan de Ferreis .	[vol. iii.]
62	Un feme porta breve Dintrusioun . .	[vol. iii.]
63	Un home port son breve de droit de Garde .	[vol. iii.]
63	Un home port son breve de trespass . .	[vol. iii.]
64	Un Katherine port son Repl'	182
64	Un home port son breve Dentre . . .	[vol. iii.]
64	Un breve Dentre fuist porta vers Johan Felbr'	[vol. iii.]
65	Robert Ercevesque .	[vol. iii.]
67	Estevene de Everos .	[vol. iii.]
68	Un feme porta breve de Dowere . . .	190

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101. Sindelesham *v.* Cherlewode . 1

To an action for a wardship by *A* against *X*, it is no defence that *X* has rendered the infant to another claimant, if the render was not made in court. *B* holds by knight's service of *A*, and before *Quia emptores* enfeoffs *C* to hold of him (*B*) by an additional service, and by doing for *B* the service due from *B* to *A*. Seisin of this service at the hand of *C* will not necessarily give *A* a right to the wardship of *C's* heir. It is a question of fact whether *C*, in doing the service to *A*, acted as *B's* attorney or as *A*'s tenant.

102. Anon. 4

Discussion of a proposed fine involving a limitation to the heirs of a living person. If by fine a grant is made under which the grantee is to hold of the grantor's lord, the grantor cannot reserve a rent service to himself.

103. Anon. 5

A proposed fine is rejected as being too uncertain for execution to be awarded upon it, because, after giving a manor to *A* for life, it gives one undivided moiety to *B* and the other to *C*.

104. Walewayn *v.* Botiler . . 7

The principle that the heir in tail is barred by a lineal warranty with descended assets can be asserted, not only by way of rebutter and by way of voucher, but also in an action of warranty of charter: and this although the heir in tail has an action of formedon pending for the recovery of the tenement.

105. Piddle *v.* Comyn . . . 11

In an action of formedon in the descender against the feoffee of the donee in tail, the tenant pleaded that the demandant was barred by warranty and descended assets. The demandant confessed the warranty but denied the descent of assets, and was nonsuited. A similar action is now brought between the same parties. Is the demandant estopped by his pleadings in the former action from alleging that the feoffment was subject to a condition witnessed by another deed and was in effect a gage to secure a loan, payment of which was duly tendered? *Semble* that he is estopped.

106. Anon. 15

Without specialty executors can maintain detinue for chattels bailed by the testator, and in this action wager of law will not be allowed. The right of the executors to bring the action is upheld against the objection that these particular chattels are not mentioned in the will.

107. Anon. 18

Cessavit de cantaria. Discussion of the form of the writ. Can any layman, except the King, have 'successors'?

108. Anon. 18

Obscure note concerning the limitations in a proposed fine.

109. Anon. . . . , . 18

Wager of law by co-defendants.

110. Anon. **19**

Replevin: a plea that less land is held and by less service is allowed.

111. Anon. **19**

Obscure note concerning the limitations in a proposed fine.

112. Roges *v.* Cogan . . . **19**

A writ *de eiectione custodiae* may comprise the wardship of the body of the heir as well as the wardship of the land.

113. Saym *v.* St. John . . . **20**

Where there is a testament appointing a single executor, the ordinary has no power to grant administration of the dead man's goods to another person (*X*) as well as this executor. But if he does so, and (*X*) actually administers, *qu.* the effect of a release given by *X* to a creditor of the testator.

114. Marton *v.* Gisburn [Prior of] . **21**

A tenant in fee simple (*B*) makes a gift in tail to *C* 'to hold of the chief lord,' but expressly reserves the reversion to himself. He (*B*) held immediately of *A* by certain services. Then *A*, being seised of the services by the hand of *C*, granted to a religious house the services of *C* and of all who should succeed *C* in the tenements. On this grant *C* attorned to the then Prior, and the present Prior has been seised of the services by *C's* hand. Now *C* has died without issue, and *D* has entered as *B's* heir and reversioner. Does *D* owe service to the Prior? Will the Prior's seisin of service by the hand of *C* enable him to avow a distress upon *D*? What is the effect of a gift in tail if the donor purports to make the tenant in tail hold, not of the donor, but of the donor's lord?

115. Giffard *v.* Hagheman . . **30**

In a *quare impedit* the impedient pleads that this is the third voidance since her husband's death, and that as doweress she should present. The plaintiff, who claims under a feoffment made by the husband's heir, replies that this is only the second voidance. It is a good rejoinder that the heir confessed the two voidances in an action brought against him by the doweress by a writ dated before the feoffment, even if the confession itself was posterior to the feoffment. A confession made in an action relates back to the date of the original writ wher*y*by the action was begun.

116. Anon. **33**

In an action *sur cui in vita* in the *post* the tenant is allowed to vouch an infant. *Semble* that this case does not fall within Stat. Westm. II. c. 40.

117. Cave *v.* Bardolf . . . **34**

Writ abated because in two different praecipes in the writ the tenant is called by two different names.

118. Anon. **34**

In an action of account against one who was to sell cloth etc. for the plaintiff, the defendant should be sued as 'receiver of his money,' not as 'bailiff.'

119. Anon. **35**

An action of waste lies against a guardian in socage: an infant sues his mother.

120. Bishop *v.* Folyot . . . **35**

Intervention in an action of a third party to allege collusion and deceit of the court. *Semble* the statutory right (Stat. Glouc. c. 11) of the termor to intervene for the prevention of a collusive recovery extends to the case of a termor who asserts that a release in fee has been made to him. The parties to an issue which involves a charge of deceiving the court are compelled to find security to abide the inquest.

121. Anon. **36**

Disseisin by force and arms: *capias* against the defendant.

122. Billing *v.* Eton [Gillyn *v.* Ditone] **37**

Approvement of waste by lord. Discussion of the extent of the right to enlarge his curtilage which is given to a lord by Stat. Westm. II. c. 46. *Qu.* whether the Statute only affirmed common law.

123. Anon. **39**

In an action for dower the tenant as tenant by the curtesy prays aid of a reversioner. It being alleged and not denied that he was the first to enter

after the husband's death, aid is refused. He is driven from a special plea on the ground that it is tantamount to 'Never so seised etc.'

124. Anon. **40**

A *scire facias* is maintained for the execution of a judgment against a person who was not party to the action and is not the heir of a party, it being alleged that he is a deforceor. An averment that the recoveror in the action was not the father of the plaintiff in the *scire facias* is allowed, on the ground that two men may have the same name.

125. Anon. **42**

A writ of false judgment lies only if judgment has been rendered on the principal matter, and not (*e.g.*) if it has merely refused a view to the tenant.

126. Anon. **42**

Seisin of escuage will sustain an avowry for homage.

127. Anon. **42**

The *elegit* (Stat. Westm. II. c. 18) cannot be granted where a debt has been confessed in court, unless the confession was made in the course of an action.

128. Merton *v.* Merton [Merton *v.* Okeland] **43**

By a fine tenements were limited to *X* for life to hold of the heirs of *A* by fealty and the annual render of a rose. *A* died. His heir *B* sued a *scire facias* out of the record of the fine against *X* to compel her to attorn. She pleaded a release in fee simple by *A*. *B* replied that at the date of the release *X* had nothing in the tenements, *A* being seised in demesne. Issue was joined, but on the day for the inquest *B* was nonsuited. *B* is now by a fine making conusance of the tenements to *C*, and *X* is summoned by the *quid iuris clamat* to say what right she claims. (1) *Semble* that she cannot be compelled to answer, since *B* by bringing the *scire facias* admitted that he was not 'in,' but 'out' of the reversion. (2) *Semble* also that, if she puts forward *A's* release, its validity cannot be contested in these proceedings, since it is of earlier date than the fine between *B* and *C*. (3) Rights of action cannot be alienated. *Semble* that, when a reversioner dies, his heir has nothing that he can alienate until an attornment puts him 'in' the reversion. (4) Judicial writs (e.g. *scire facias* and *quid iuris clamat*) must not be used as substitutes for original writs.

129. Halstede *v.* Gravashale . . **53**

As against a tenant who is 'in' as son and heir of *X*, it is not sufficient for a demandant to allege that the tenant is the son, not of *X*, but of another man, without adding that he was born 'outside' the marriage between *X* and *X's* wife.

130. Anon. **56**

In an action of dower, a plea that the demandant has accepted certain lands in full satisfaction is allowed.

131. Anon. **57**

In an action of dower against a tenant in tail, she vouches herself and two coparceners as coheiresses of the donor under whom she claims her estate tail.

132. Umfraville *v.* Lonstede . . **58**

In an action of debt for a penalty, the Court on equitable grounds declines to give judgment for the plaintiff, because, though according to the letter of the bond the penalty is due, the plaintiff has suffered no damage.

133. Burton [Abbot of] *v.* Lancaster [Earl of] **59**

In an action of replevin the defendant before avowry pleads 'ancient demesne.' That the *locus in quo* is within a manor of the ancient demesne is proved by Domesday Book. *Qu.* whether this plea is sufficiently answered by the averment that the plaintiff's church holds by homage and a blanch ferm. The tenures on the ancient demesne discussed.

134. Seneschal *v.* Merton College . **63**

Upon the grant of the reversion of tenements held in dower, the doweress attorns to the grantee, but not until the grantor is dead. *Qu.* whether the attornment is effectual. In an assize of novel disseisin a verdict favourable to the plaintiff is given. The defendant obtains from the justices of assize an order for a 'certification' on the ground that a certain fact has not been found by the jurors. The plaintiff brings the

case before the King's Bench by *scire facias*, and apparently that Court, holding the 'certification' unnecessary, gives judgment for the plaintiff.

135. Anon. **67**

The nature of the estate of a tenant by statute merchant considered. *Semble* that he is not a freeholder for the purpose of a release. In the novel disseisin the plaintiff offers the defendant's deed by way of title. *Qu.* whether the defendant can plead that it is not his deed and confine the inquiry to that point.

136. Anon. **68**

In an action of escheat an intervener is received on the ground that the tenant in the action is only tenant for life, the reversion being in the intervener.

137. Anon. **69**

In an action of nuisance the sheriff has no power to take an inquest as he has in an action of waste. An inquest irregularly taken is set aside.

138. Anon. **69**

Entry *ad terminum qui praeteriit* on a demise to *X* by the demandant's ancestor. The tenant pleads a charter of feoffment made by the ancestor to *X*. The demandant, after unsuccessfully offering to aver his writ, is driven to *Non est factum*.

139. Anon. **70**

Dower against husband and wife. The husband makes default, and the wife having been received, pleads non-tenure.

140. Anon. **71**

A resummons set aside for not agreeing with the record.

141. Coventry [Prior of] *v.* Grauntpie 71

Discussion of the form of the writ in a case in which market rights have been infringed, and of the necessity of stating the nature of the damage that the plaintiff has suffered. Can a religious house prescribe for a franchise, *e.g.* a market? Does the grant of a market confer an exclusive right extending over the whole vill even when the charter says that the market is to be held in one particular part of the vill?

142. Barlings [Abbot of] *v.* Vallet . 75

In *quare impedit* the impedient pleads that he is parson imparsonee, the advowson being in the plaintiff. *Qu.* whether this is a good plea.

143. Oxford *v.* Friars Minor . . 75

Question is raised touching the nature of the rights given to the Franciscan Friars by a deed which purports to give them the 'use' of certain houses.

144. Anon. **76**

In a *nuper obiit* for a share of a tenement partible among males, the tenant pleads tenure by scutage, and the demandant is suffered to reply that the tenement is partible and has been partitioned.

145. Bigod *v.* Tattershall . . . 78

In an action of dower against a doweress she vouches. The warranty is counterpleaded on the ground that the demandant's right to dower is older than the tenant's.

146. Huishe *v.* Wike . . . 78

In a several fishery a boat may be taken in distress as *damage feasant*.

147. Anon. **79**

An annual render of clothes and provisions is granted by a fine.

148. Anon. **79**

In a *quare impedit* the plaintiff counts that since the last presentation the tenements to which the advowson is appendant came to the impedient's hands and were granted by him to the plaintiff. This is a sufficient statement of title; but it is a good plea that the plaintiff is not seised of those tenements.

149. Anon. **80**

A guardian imprisoned when on his way to answer for an infant.

150. Fressingfield *v.* Rosselin . . 81

If *B*, who is seised, enfeoffs *C* to hold of *A* (the chief lord), then, even before any attornment, *C* is privy enough to *A* to counterplead an avowry by *A* upon *X*, which is inconsistent with *B's* title. Land that has descended *ex parte paterna* will not descend to maternal kinsfolk.

MICHAELMAS, 3 EDWARD II.

1. **Berenger** *v.* **Barton** . . . 84

A, tenant in chief, demises for years to *B*, who demises with warranty to *C*. On *A's* death leaving an infant heir, the escheator in execution of his duty ejects *C*. An action of covenant by *C* against *B* is sustained. *Semble* it would be otherwise if the ejector were a person against whom *C* could bring the *quare eiecit*.

2. **Champyoun** *v.* **Engelton** . . 88

When in a replevin action the avowry is upon a stranger for services arrear, the plaintiff cannot plead 'nothing arrear.' So held upon demurrer.

3. **Fen** *v.* **Somercotes** . . . 90

A writ is abated on the ground that it is a hybrid between formedon in the descender and entry *sur cui in vita*.

4. **Bukeham** *v.* **Staunton** . . . 92

If a termor brings replevin and the avowry is upon his lessor for services arrear, the plaintiff is not entitled to have aid of his lessor. *Semble* that the plaintiff, after admitting in an aid-prayer that he is a termor, may plead 'Outside his fee.' *Qu.* whether a termor can vouch.

5. **Sayville** *v.* **Pontefract** [**Prior of**] . 93

In a *contra formam feoffamenti* where the complaint is of the exaction of suit to a court at *X*, the lord is suffered to plead that, for the tenant's ease, suit at *X* was substituted for suit at *Y*, and that suit was done at *Y* before the statutory period of limitation.

6. **Curzun** *v.* **Cave** 95

In a *contra formam feoffamenti* the plaintiff need not produce a charter of feoffment. The action being against a doweress and her husband, and seisin before the time of limitation being denied, the defendants have aid of the heir.

7. **Anon.** 97

In a fine *sur* release it is not proper to say of whom the tenements are to be holden.

8. **Hakebeche** *v.* **Hakebeche** . . 97

In a *nuper obiit* the demandant avers that all the socage tenements within a certain fee are partible among sons, adding that the tenements in demand were partitioned in a certain instance. This is traversed. *Qu.* whether the demandant was well advised in tendering this complex averment.

9. **Cave** *v.* **Bagge** 99

In an action for land by *A* against *B*, the latter pleads that he is the villein of *X*. The writ is abated, although *A* desires to prove by record that in an action against *B* and *X* the tenancy was disclaimed by *X*, and that *B* answered as tenant.

10. **Conington** *v.* **Lyouns** . . . 100

Services are being conveyed by fine. The terre tenant, being summoned by the *per quae servicia*, produces a release of the services by the conusor's ancestor. *Qu.* whether he need answer to an averment of posterior seisin by the conusor.

11. **Anon.** 102

Effect of nonsuit in an action of naifty where the demandant is head of a religious house.

12. **Combe** [**Abbot of**] *v.* **Garsale** . 103

A plea of tender is insufficient, unless the party making it continues the tender in court. Fealty must be tendered in person; but *semble* that a bailiff may receive it. *Qu.* whether to an avowry for a rent of 23 shillings the plaintiff, admitting a rent of 20, can traverse the alleged seisin of a rent of 23. After a plea to an avowry, the avowant is allowed aid of his parcener.

13. **Perves** *v.* **Foxley** . . . 105

In an action of besael the tenant pleads 'last seisin' in the person of one *T*, who entered as son and heir of the besael. *Semble* this is not a good plea in abatement, unless the tenant alleges that *T* entered as eldest son or as next heir. The law as to pleas of 'last seisin' and 'claim by the same descent' discussed.

14. Lacey *v.* Blaby 108

A writ of dower *ex assensu patris* containing the clause *unde nichil habet* is not abatable by the plea that parcel of her dower has been received by the demandant, since those words relate to the definite quantity of land specified in this writ.

15. Bayeux *v.* Beryhale . . . 110

The bishop's certificate, given in answer to a royal writ, to the effect that a litigant is legitimate, is conclusive, not only between parties and privies, but against strangers also.

16. Ughtred *v.* Chaumont . . 112

In an action for waste between tenants in common the parol will not demur for the defendant's nonage if he is personally charged with the tort. If *A* and *B* hold in common, and *A* has assigned dower out of his share, *qu.* whether the doweress is a necessary party to an action of waste by *A* against *B*.

17. Anon. 113

In an action by an infant the tenant cannot after the count prove non-summons by his law. *Semble* that, notwithstanding Stat. Westm. I. c. 47, the parol shall demur for the demandant's nonage in a writ of entry on the disseisin done to his ancestor, if the suit is not fresh and the ancestor did not sue and die pending the plea.

18. Richemund *v.* Tannur . . 114

In the past a bastard could abate a mortdancestor by 'claim.' Therefore a man's legitimacy is not proved by the fact that he has 'claimed' and abated a writ. Nowadays a 'claim' can be defeated by an allegation of bastardy.

19. Mareys *v.* Cogan . . . 116

A lord avows on the plaintiff for suit of court and relies on his own seisin by the plaintiff's hand. The plaintiff puts forward a charter of feoffment made to him or an ancestor of his by the lord's ancestor and not expressly reserving suit, and is ready to aver that the suit was not done before the limitation mentioned in Stat. Marlb. c. 9. *Qu.* whether in this action of replevin the plaintiff can make good the right given to him by this Statute or is put to the *contra formam feoffamenti*.

20. Foliot *v.* Foliot 119

Husband and wife are jointly enfeoffed by the husband's father. After the father's death they, being vouched to warranty, vouch the husband as his father's heir, in order that he may then vouch the heir of the father's feoffor. A reversioner vouched to warranty by a doweress warrants with a saving clause for an action of waste which he has against her.

21. Anon. 120

An action of trespass by the commonalty of London against a man for being a common forestaller and so infringing a civic ordinance is dismissed. Charges of general misconduct (*e.g.* being a common thief) can only be made on the King's behalf and in the eyres.

22. Wateville *v.* Wateville . . 120

In an action for dower, the tenant, a doweress, vouches her husband's heir, who is in ward to a lord. The guardian has to warrant, notwithstanding the objection that he can give no higher answer than the vouchor could have given.

23. Anon. [Scot *v.* Batelking] . . 122

A writ of entry is brought against *A* and *B* (a married woman). Default after default was made by *A*, and *B* is received to defend for the whole, upon her allegation that *A* is tenant for life and *B* reversioner of the whole. Then *B* vouches without her husband. [See the accompanying note from the record.]

24. Anon. 124

Qu. whether a deed is void because it bears an impossible date, and whether exception to it on this ground can be taken by one who in a previous action pleaded a quitclaim.

25. Henkeston *v.* Gosfeld . . . 125

A deed grants an annuity to an infant until he shall be advanced to an ecclesiastical benefice. A benefice for life of reasonable value, regard being had to the amount of the annuity, is

intended. The office of holy water clerk is held to be an inadequate benefice.

26. Seriaunt *v.* Yonge . . . 127

Six acres of meadow cannot be appurtenant to a virgate of land. *Semble* small quantities of moor and pasture have been treated as appurtenances of a carucate of land.

27. Anon. 128

A writ upheld against grammatical objections, where *quas clamat* was followed by *et in que*.

28. Scardeburgh *v.* Ulram. . . 129

Semble that a man may claim as appurtenant to a carucate a prescriptive right to the 'agistment' of beasts on certain land in the same vill, of which land he is neither lord nor tenant.

29. Mounteny *v.* Peyton . . . 130

A writ for land against two as tenants in common can be abated by the averment that they hold in severalty. *Qu.* whether they need say how much each of them holds.

30. Bullok *v.* Chaumbre . . . 131

In abatement of a writ of intrusion the tenant pleads joint feoffment (witnessed by charter) with a person not named in the writ. *Semble* that 'you were first to intrude' would not be a good reply.

31. The King *v.* Ros. . . . 133

One *C* inherited a manor and advowson, of which his stepfather *R* was tenant by the curtesy. *R* leased to *C* for *C's* life with covenant that the tenements were to return to *R* as tenant by the curtesy if *R* outlived *C*. The church falling vacant, *C* by darein presentment recovered against disturbers. The record of the assize said nothing of *R's* rights and showed that *C* recovered on the seisin of his ancestors. *C* has now died in *R*'s lifetime and his heir is in ward to the King. The church falls vacant. The King is entitled to present, for it appears by record that *C* made the last presentation in his own right, and the covenant cannot be enforced against the infant.

32. Septfontaines *v.* Leeds [Prior of] . 136

In a writ of entry *sur disseisin* in the *post* the demandant counts on her own seisin as of fee and right. *Semble* that the plea 'not seised as of fee and right' will not be allowed. But 'not seised as she asserts so that she could be disseised' is accepted.

33. Berenger *v.* St. Helen . . 138

A sues an attachment on a prohibition forbidding *B* to sue in Court Christian. *B* wages law that he did not sue. *A* obtains another attachment calling on *B* to say why he sued execution in Court Christian. *B* averred that he had not done so. Issue was joined. *B* then made his law on the first attachment. *Semble* that the Court will not now take an inquest on the second attachment, as that was accessory to the first.

34. Anon. 139

An issue to the country has been joined. On the day for the inquest the tenant produces a quitclaim. This will not delay the inquest, at all events if it was not made after the joinder of issue.

35. Anon. 140

One of two joint creditors cannot sue without the other. In such a case there can be no 'summons and severance' enabling the one creditor to recover an aliquot part. Release by one binds all.

36. Anon. 140

To a *cessavit per biennium* for Blackacre, the tenant can plead that the rent mentioned in the count was really paid for Blackacre and Whiteacre, and that he is ready to pay all arrears attributable to the tenancy of Blackacre.

37. Anon. 141

A view is granted in a writ of intrusion against husband and wife, although it charges the wife herself with intruding while she was sole.

38. Stirkeland *v.* Warde . . . 142

A *sur cui in vita* is abatable if the husband was living when the writ was purchased, though he has since died.

39. Anon. 142

After essoin a man appears who bears the same name as the tenant. The demandant denies that he was tenant on the day of writ purchased. Issue joined.

40. Anon. 143

A woman is compelled to attorn to the conusee of a fine without joinder of her husband, though between the date of the conusance and that of her appearance she has married.

41. Anon. 143

Tenants in common vouch severally each a different warrantor for his share.

42. Anon. 145

Measure of the recompense due from a warrantor when an advowson has been recovered against him.

43. Anon. 145

Elopement with an adulterer as a bar to dower.

44. Anon. 145

Practice as to resummons when an issue has been sent to Court Christian.

45. Anon. 146

A name misspelt in a judicial writ.

46. Anon. 146

When a rentcharge is the subject of a fine, a writ to compel the terre tenant to attorn will not be issued.

47. Anon. 146

A fine by way of the grant of a life estate is refused because there is no preceding conusance of the right to the grantor.

48. Batheleye *v.* **Thurgarton [Prior of]** 147

B, who holds Blackacre and Whiteacre of *A* by a single service, enfeoffs his (*B's*) son *C* in fee tail of Blackacre to hold of *B* by a rent. *B* then grants *C's* service to *A*, and *C* attorns. *B* dies, and *C* inherits Whiteacre. *Qu.* whether *A* can distrain in Blackacre for the whole service by which *B* held of *A*.

49. Anon. 148

Tenant in dower can be made to answer for exile of folk as well as for waste, although such exile is not mentioned in Stat. Glouc. c. 5.

50. Westley *v.* **Fulewelle** . . 149

Geese and ducks are 'beasts' within the meaning of a writ of rescue. *Qu.* whether there is 'rescue' if the beasts distrained as *damage feasant* were doing no damage.

51. Acclum *v.* **Carpenter** . . . 150

The contention that a writ of *cui in vita* (or *sur cui in vita*) had its origin in a Statute of Edw. I. and therefore will not lie for an alienation *temp.* Hen. III. is unsuccessfully raised.

52. Anon. 151

Security to abide the inquest in an action of account.

53. Anon. 151

Born fools and lunatics.

54. Langley [Abbot of] *v.* **Suthmere** 151

In a writ of intrusion the tenant, if charged with being the first to abate, can neither vouch nor pray aid. If the action is by the grantee of the reversion, *semble* that the attornment of the particular tenant is traversable.

55. Goldington *v.* **Berewyse** . . 152

A variance between the original writ and a writ issued in the course of mesne process held to be unimportant.

56. Notes on various writs . . 153

(1) Mesne against husband and wife. (2) Ravishment of ward. (3) Formedon in the reverter where the heir in tail became professed in religion.

HILARY, 3 EDWARD II.

1. Gyse *v.* **Baudewyn . . . 154**

In counting on a writ of abetment it is unnecessary to allege the insufficiency of the appellor, and the plaintiff is not confined to demanding such damages as were assessed by the inquest of office.

2. Hereford *v.* **Hereford . . . 155**

A fine *sur conusance* with grant and render to the conusor is levied. A writ of execution is issued and returned. *Semble* that a party thereto cannot by a *scire facias* for execution raise the question whether the fine has been duly executed. *Qu.* whether in a grant 'two houses in *X* and *Y*' must mean one house in *X* and another in *Y*.

3. Anon. 157

A brings *quare impedit* against *B*, recovers and presents. The church falls vacant. *Semble* that *A* can recover against *B* by darein presentment, though *B* is prosecuting an attaint against the previous inquest.

4. Frowyk *v.* **Leuekenore . . . 157**

A writ of ravishment of ward for a guardian in socage is maintained against the objection that it is new. It has been devised by the common counsel of the clerks in the Chancery and falls within the Statute (Westm. II. c. 24) which enjoins the making of writs *in consimili casu*. Various objections to the wording of the writ are discussed and overruled. The heir in socage is of full age at fourteen.

5. Anon. 164

A tenant who does not appear at the first day must, if the demandant insists, save the default before he can abate the writ for misnomer.

6. Le Raas *v.* **Mildecumbe . . 164**

In an action of besael the aid-prayer of a tenant in special tail after possibility of issue extinct is refused, apparently on the ground that she might vouch.

7. Misterton *v.* **York [Archbishop of]. 165**

In a *quare impedit* against the ordinary the demandant laid seisin of a manor and an appendant advowson in an ancestor, alleged descent to himself, and alleged a presentation by the ancestor. 'He did not present' is a good plea.

8. Boys *v.* **Charles 168**

The tenant in an action (*A*) pleads joint tenancy with his wife (*B*) in abatement of the writ. He is driven to disclose his case. Without producing specialty, he pleads a feoffment to one *X* with remainder in special tail to *A* and *B*, which he desires to aver. Held a good averment, and the writ abates. Discussion of the cases in which feoffments without charter can be proved by the country.

9. Elys *v.* **Ryggesby . . . 173**

A man brings replevin. The avowry is upon him and his wife for services due from a tenement held in right of his wife. This avowry does not entitle him to aid from his wife before he has pleaded. *Qu.* whether a grantee of a tenant's services can avow upon the seisin of an ancestor of the grantor. *Qu.* whether he can do so if he is only grantee for life. *Qu.* whether in favour of such a grantee seisin of parcel of the services is seisin of the whole.

10. Kenyngton *v.* **Cornwall [Countess of] 179**

Qu. Whether a doweress to whom a manor is assigned is entitled to a relief that became due on the death of a tenant during her husband's lifetime. If the husband's executors are entitled, can this objection be taken by a plaintiff in replevin upon whom the avowry is not made?

11. Anon. 181

Notes on writs of protection and the demise of the Crown and the resummons of actions.

12. Boxendone *v.* **Haliburne . . 182**

An avowry for services arrear upon a woman as upon the avowant's tenant in dower, with an allegation of seisin by her hand, is [not?] sufficient without disclosing more. In the present case the woman, in order to show that she

is not tenant in dower, produces a lease for life without service made by her husband's heir. The avowant, who derives his rights from the heir, is driven to an averment as to the nature of the woman's tenancy, notwithstanding his allegation that the woman attorned to him as tenant in dower and that he is seised of her services.

13. Muleburne *v.* Le Moygne . . 187

The petty fees of Mortain which owe less scutage also owe less relief than ordinary fees. *Semble* that seisin by the lord of the full rate of scutage would enable him to avow for the full relief, notwithstanding that the fee is a petty fee.

14. Zouche *v.* Cobham . . . 189

A woman confronted by her deed of release tenders to aver that she was under age when the deed was made, and the other party is driven to traverse this averment instead of averring (1) that the relessor was of full age at the date inserted in the deed, or (2) that previously she had been received in court to acknowledge a fine.

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Vol. XX., for 1905. YEAR BOOKS of EDWARD II. Vol. III. By Professor MAITLAND.

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The following are among the Works contemplated for future volumes:

Vol. . YEAR BOOKS of EDWARD II. By Professor MAITLAND. Vols. IV. &c.

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December 1904.

Selden Society.

FOUNDED 1887.

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July 1901.

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